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CESARIO CHAVARRIA,
FIDELIO CHAVARRIA,
JONATHAN PEREZ, and
BYRON ALEXANDER POP ELIAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CESARIO CHAVARRIA, an individual;
FIDELIO CHAVARRIA, an individual;
JONATHAN PEREZ, an individual; BYRON
ALEXANDER POP ELIAS, an individual,

Plaintiffs,

vs.

ROMA ANTICA INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

- 1. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE § 226.7;**
- 2. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE § 226.7;**
- 3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE § 1197.1;**
- 4. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510;**
- 5. FAILURE TO PAY EARNED WAGES IN VIOLATION OF LABOR CODE § 201;**
- 6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226;**
- 7. VIOLATION OF LABOR CODE § 233;**

**8. PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

[DEMAND FOR JURY TRIAL]

1 Plaintiffs Cesario Chavarria (“Cesario”), Fidelio Chavarria (“Fidelio”), Jonathan Perez
2 (“Perez”), and Byron Alexander Pop Elias (“Elias”) (collectively, “Plaintiffs”) hereby bring this
3 Complaint against Defendant Roma Antica Inc. (“Roma” or “Defendant”) and Does 1 through 50,
4 inclusive, and allege the following on knowledge as to themselves and their known acts, and on
5 information and belief as to all other matters:

6 **I.**

7 **PARTIES**

8 1. At all material times mentioned herein, Plaintiffs were individuals performing work for
9 Defendant within San Francisco County at 3242 Scott Street, San Francisco, California 94123 and Marin
10 County at 286 Magnolia Avenue, Larkspur, California 94939. The unlawful conduct alleged herein
11 occurred in San Francisco County and Marin County.

12 2. Cesario Chavarria is, and at all relevant times mentioned herein was, a resident of Marin
13 County.

14 3. Fidelio Chavarria is, and at all relevant times mentioned herein was, a resident of Marin
15 County.

16 4. Jonathan Perez is, and at all relevant times mentioned herein was, a resident of Marin
17 County.

18 5. Byron Alexander Pop Elias is, and at all relevant times mentioned herein was, a resident
19 of Marin County.

20 6. At all material times mentioned herein, Roma Antica Inc. was a California corporation
21 conducting business in San Francisco County and Marin County.

22 7. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
23 DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs
24 will amend this Complaint to allege the true names and capacities of such Defendants when the same
25 has been ascertained. Each of the fictitiously named Defendants is responsible in some manner for the
26 acts complained of herein. Unless otherwise stated, all references to named Defendants shall include
27 DOE Defendants as well.

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II.

JURISDICTION AND VENUE

8. Jurisdiction and venue are proper in this Court because all of the claims alleged herein arose in San Francisco County and Marin County and all of the Defendants were and/or are residents of San Francisco County or Marin County or are doing or did business in San Francisco County or Marin County, and/or their principal place of business is in San Francisco County or Marin County, in each case, at all times relevant herein.

9. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of interest and costs.

III.

FACTUAL ALLEGATIONS

10. Roma is a restaurant specializing in Italian cuisine. Currently, Roma operates in two locations within California in San Francisco County and Marin County. Plaintiffs and other aggrieved employees performed work for Roma at both of its California locations.

11. Cesario worked as a chef at Roma's San Francisco location from in or about March 2019 to May 2019, and at Roma's Marin County location from in or about June 2019 to August 2021. At the San Francisco location, Cesario worked approximately four days per week for 28 hours. At the Marin County location, Cesario worked approximately six days per week for 78 hours. Cesario's job duties included preparing food, cooking lunch and dinner, ordering food supplies, and cleaning the kitchen. Over the course of his employment, Cesario was misclassified as exempt such that he earned a salary regardless of the number of hours he worked. At the time of his termination, Cesario earned \$72,000 per year.

12. Fidelio worked as a dishwasher at Roma's Marin County location from in or about February 2021 to July 2021. Fidelio worked approximately five days per week for 35 hours. Fidelio's job duties included washing dishes, preparing food, and disposing of the trash. At the time of his termination, Fidelio earned \$16.00 per hour.

1 13. Perez worked as a dishwasher at Roma's Marin County location in or about July 2021 to
2 September 2021. Perez's job duties included washing dishes and preparing food. Perez worked
3 approximately four days a week for 28 hours. At the time of his termination, Perez earned \$16.00 per
4 hour.

5 14. Elias worked as a dishwasher at Roma's Marin County location in or about January 2021
6 to July 2021. Elias's job duties included washing dishes, preparing food, and disposing of the trash. Elias
7 worked approximately five days a week for 32 hours. At the time of his termination, Elias earned \$16.00
8 per hour.

9 15. Roma fostered a fear-based environment such that employees were afraid to take their
10 rest and meal periods. It was well known that employees were routinely chastised when they tried to take
11 their rest and meal periods. By way of example, Roma's executive chef, Marco Sbaraglia, proprietors,
12 Dogukan Solmaz and Roberto Sbaraglia, Partner, Alessandro Vasselli, and manager, Giovanni (last
13 name unknown), became visibly angry when they noticed employees sitting. On multiple occasions,
14 Cesario complained to Solmaz, Sbaraglia, and Vasselli that employees were not taking breaks. While
15 they promised to resolve the issue, it was never rectified. Moreover, Roma failed to provide its
16 employees with an employee handbook or inform them of Roma's policies explaining their right to rest
17 and meal periods.

18 16. Because of the foregoing, Plaintiffs and other aggrieved employees working for Roma
19 were routinely forced to work without ten-minute rest periods for every four hours worked or major
20 fraction thereof. These rest periods were either not provided at all, or were interrupted. Additionally,
21 Plaintiffs and other aggrieved employees working for Roma were routinely forced to work without
22 uninterrupted meal periods of not less than 30 minutes for work periods exceeding five hours. These
23 meal periods were either not provided at all, or were interrupted.

24 17. Working at Roma was exceedingly taxing on Plaintiffs to the point that it effected their
25 health. For instance, Cesario was diagnosed with stress and anxiety in or about August 2021 and was
26 advised by his doctor to take three days off from work. Cesario informed Solmaz, Sbaraglia, and Vasselli
27 of his diagnosis and that it was caused by his working conditions at Roma. Nonetheless, Vasselli called
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1 Cesario on his second day off from work and told him to come into work the next day. When Cesario
2 reminded Vasselli that his doctor ordered him to take three days off from work, Vasselli insisted that he
3 come into work the next day and that Cesario “will be fine.” Feeling pressured by Vasselli’s insistence,
4 Cesario abided by his demand and worked the following day.

5 **IV.**

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 18. Prior to the initiation of this lawsuit, on November 10, 2021, Plaintiffs filed a notice online
8 with the Labor and Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys
9 General Act (“PAGA”), as well as a filing fee of \$75, alleging the claims described in this Complaint.
10 The LWDA did not notify Plaintiffs with notice as to whether it intended to investigate the alleged
11 violations within 60 calendar days of the postmark date of the PAGA notice, nor was notice provided
12 within 65 calendar days of the postmark date of the PAGA notice. As such, Plaintiffs may commence a
13 civil action pursuant to Labor Code section 2699. *See* Lab. Code § 2699.3(2)(A). On November 10,
14 2021, Plaintiffs sent a copy of the PAGA notice via certified mail to Roma. True and correct copies of
15 the PAGA notice and proof of mailing by certified mail are attached hereto collectively as **Exhibit A**.
16 All conditions precedent to the institution of this lawsuit have been fulfilled.

17 **V.**

18 **FIRST CAUSE OF ACTION**

19 **(Failure to Provide Rest Periods in Violation of Labor Code § 226.7)**

20 **(By Plaintiffs Against Defendant)**

21 19. Plaintiffs reallege and incorporate by reference paragraphs 1-18, inclusive, of this
22 Complaint as though fully set forth herein.

23 20. Industrial Welfare Commission Wage Order No. 5, section 12, provides: “(A) Every
24 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
25 shall be in the middle of each work period. The authorized rest period shall be based on the total hours
26 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof. . . . (B) If an employer fails to provide an employee a rest period in accordance with the
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1 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the rest period is not provided."

3 21. California Labor Code section 226.7 provides: "If an employer fails to provide an
4 employee a meal period or rest or recovery period in accordance with a state law, including, but not
5 limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and
6 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the
7 employee one additional hour of pay at the employer's regular rate of compensation for each work day
8 that the meal or rest or recovery period is not provided." Lab. Code § 226.7.

9 22. As set forth above, during the course of their employment with Defendant, Plaintiffs
10 were consistently not provided with rest periods for every four hours worked and were not
11 compensated therefor.

12 23. Plaintiffs are owed compensation in the amount of one additional hour's worth of pay
13 for each workday in which they missed a rest period.

14 **VI.**

15 **SECOND CAUSE OF ACTION**

16 **(Failure to Provide Meal Periods in Violation of Labor Code § 226.7)**

17 **(By Plaintiffs Against Defendant)**

18 24. Plaintiffs reallege and incorporate by reference paragraphs 1-23, inclusive, of this
19 Complaint as though fully set forth herein.

20 25. California Labor Code section 512 provides, "An employer shall not employ an
21 employee for a work period of more than five hours per day without providing the employee with a
22 meal period of not less than 30 minutes." Lab. Code § 512(a).

23 26. Industrial Welfare Commission Wage Order No. 5, section 11, provides: (A) No
24 employer shall employ any person for a work period of more than five (5) hours without a meal period
25 of not less than 30 minutes, except that when a work period of not more than six (6) hours will
26 complete the day's work the meal period may be waived by mutual consent of the employer and the
27 employee. . . . (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal
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1 period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal
2 period shall be permitted only when the nature of the work prevents an employee from being relieved
3 of all duty and when by written agreement between the parties and on-the-job paid meal period is
4 agreed to. . . . (D) If an employer fails to provide an employee a meal period in accordance with the
5 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
6 employee’s regular rate of compensation for each workday that the meal period is not provided.”

7 27. California Labor Code section 226.7 provides: “If an employer fails to provide an
8 employee a meal period or rest or recovery period in accordance with a state law, including, but not
9 limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and
10 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the
11 employee one additional hour of pay at the employer’s regular rate of compensation for each work day
12 that the meal or rest or recovery period is not provided.” Lab. Code § 226.7.

13 28. As set forth above, during the course of their employment with Defendant, Plaintiffs
14 were consistently not provided with meal periods and/or uninterrupted meal periods for every five
15 hours worked and was not compensated therefor.

16 29. Plaintiffs are owed compensation in the amount of one additional hour’s worth of pay
17 for each workday in which they missed a meal period.

18 VII.

19 THIRD CAUSE OF ACTION

20 (Failure to Pay Minimum Wages in Violation of Labor Code § 1197.1)

21 (By Cesario Chavarria Against Defendant)

22 30. Plaintiffs reallege and incorporate by reference paragraphs 1-29, inclusive, of this
23 Complaint as though fully set forth herein.

24 31. As set forth in greater detail above, Defendant misclassified Cesario Chavarria. As a
25 result of this misclassification, Cesario was not paid minimum, regular, or overtime wages for all work
26 performed over eight hours per day or 40 hours per week. As such, Defendant paid Cesario “a wage
27 less than the minimum fixed by an applicable state or local law.” Lab. Code § 1197.1(a).
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1 32. Pursuant to Labor Code section 1197.1:

2 Any employer or other person acting either individually or as an officer, agent, or
3 employee of another person, who pays or causes to be paid to any employee a wage less
4 than the minimum fixed by an applicable state or local law, or by an order of the
5 commission, shall be subject to a civil penalty, restitution of wages, liquidated damages
6 payable to the employee, and any applicable penalties imposed pursuant to Section 203
7 as follows:

8 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
9 for each underpaid employee for each pay period for which the employee is underpaid.
10 This amount shall be in addition to an amount sufficient to recover underpaid wages,
11 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
12 pursuant to Section 203.

13 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
14 (\$250) for each underpaid employee for each pay period for which the employee is
15 underpaid regardless of whether the initial violation is intentionally committed. This
16 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
17 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
18 Section 203.

19 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
20 203, recovered pursuant to this section shall be paid to the affected employee.”

21 Lab. Code § 1197.1(a). Accordingly, Cesario may seek civil penalties, restitution of wages, and
22 liquidated damages. *See id.*

23 33. Pursuant to Labor Code section 1194.2, “In any action under Section . . . 1197.1 to
24 recover wages because of the payment of a wage less than the minimum wage fixed by an order of the
25 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount
26 equal to the wages unlawfully unpaid and interest thereon.” Lab. Code § 1194.2(a). Accordingly,
27 Plaintiffs may seek liquidated damages and interest. *See id.*

28 34. Cesario is entitled to reasonable attorneys’ fees and costs. *See* Cal. Lab. Code §
218.5(a).

1 **VIII.**

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Pay Overtime in Violation of Labor Code § 510)**

4 **(By Cesario Chavarria Against Defendant)**

5 35. Plaintiffs reallege and incorporate by reference paragraphs 1-34, inclusive, of this
6 Complaint as though fully set forth herein.

7 36. Pursuant to California Labor Code section 510, "Eight hours of labor constitutes a day's
8 work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
9 one workweek and the first eight hours worked on the seventh day of work in any one workweek shall
10 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
11 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
12 twice the regular rate of pay for an employee." Lab. Code § 510(a).

13 37. Pursuant to California Labor Code section 1194, "Notwithstanding any agreement to
14 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
15 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
16 balance of the full amount of this minimum wage or overtime compensation, including interest
17 thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

18 38. As set forth in greater detail above, Defendant misclassified Cesario Chavarria. As a
19 result of this misclassification, Cesario was not paid minimum, regular, or overtime wages for all work
20 performed over eight hours per day or 40 hours per week. Accordingly, Cesario is entitled to the unpaid
21 balance of the full amount of his overtime compensation, including interest thereon. See Lab. Code §
22 1194(a).

23 39. Cesario is entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code § 1194(a).

IX.

FIFTH CAUSE OF ACTION

(Failure to Pay Earned Wages in Violation of Labor Code §§ 201, 202)

(By Cesario Chavarria Against Defendant)

40. Plaintiffs reallege and incorporate by reference paragraphs 1-39, inclusive, of this Complaint as though fully set forth herein.

41. Pursuant to California Labor Code section 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a).

42. Pursuant to California Labor Code section 202, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Cal. Lab. Code § 202(a).

43. Pursuant to California Labor Code section 203, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 [and] 202 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Cal. Lab. Code § 203(a).

44. As set forth in greater detail above, during the course of Cesario Chavarria’s employment with Defendant, Cesario was misclassified and as a result was not paid minimum, regular, nor overtime wages for all hours worked. Because Plaintiff resigned during the relevant period, Defendant is further liable for violation of Labor Code sections 202 and 203.

45. Cesario is entitled to reasonable attorneys’ fees and costs. *See* Cal. Lab. Code § 218.5(a).

1 X.

2 **SIXTH CAUSE OF ACTION**

3 **(Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226)**

4 **(By Cesario Chavarria Against Defendant)**

5 46. Plaintiffs reallege and incorporate by reference paragraphs 1-45, inclusive, of this
6 Complaint as though fully set forth herein.

7 47. Employers are required by California Labor Code section 226(a) to furnish accurate
8 itemized wage statements semimonthly, or at the time of each payment of wages, which show “(1) gross
9 wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the
10 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
11 basis, (4) all deductions, provided that all deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which
13 the employee is paid, (7) the name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number, (8) the name
15 and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as
16 defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the
17 services of the employer, and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee.”

19 48. Pursuant to California Labor Code section 226(e), “[a]n employee suffering injury as a
20 result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
21 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
22 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
23 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
24 of costs and reasonable attorney’s fees.” Cal. Lab. Code § 226(e)(1).

25 49. Defendant knowingly and intentionally failed to furnish accurate itemized wage
26 statements to Cesario Chavarria in accordance with Labor Code section 226(a). Accordingly, Cesario is
27 entitled to the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
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violation occurred and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). *See* Cal. Lab. Code § 226(e)(1).

50. Cesario is entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code § 226(e)(1).

XI.

SEVENTH CAUSE OF ACTION

(Violation of Labor Code § 233)

(By Cesario Chavarria Against Defendant)

51. Plaintiffs reallege and incorporate by reference paragraphs 1-50, inclusive, of this Complaint as though fully set forth herein.

52. Pursuant to Labor Code section 233, "An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5." Cal. Lab. Code § 233(c).

53. Pursuant to Labor Code section 246.5(a), "Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes: (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member." Cal. Lab. Code § 246.5(a)(1).

54. As set forth above, Defendant denied Cesario Chavarria his right to use sick leave, and further discharged, threatened to discharge, demoted, suspended, and otherwise discriminated against Plaintiff for using, or attempting to exercise the right to use, sick leave to attend to his own illness and/or health condition. Accordingly, Defendant violated Labor Code section 233. *See* Lab. Code § 233(c).

55. Cesario is entitled to reinstatement and actual damages or one day's pay, whichever is greater, as well as appropriate equitable relief. *See* Cal. Lab. Code § 233(d).

56. Cesario is entitled to reasonable attorney's fees and costs. *See* Cal. Lab. Code § 233(e).

XII.

EIGHTH CAUSE OF ACTION

(Penalties Pursuant to the Private Attorneys General Act)

(By Plaintiffs Against Defendant)

57. Plaintiffs reallege and incorporate by reference paragraphs 1-56, inclusive, of this Complaint as though fully set forth herein.

58. Pursuant to Labor Code section 2699(a), “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

59. Pursuant to Labor Code section 2699(f), “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Cal. Lab. Code § 2699(f)(1)-(2).

60. Plaintiffs and other aggrieved employees are entitled to penalties for the following violations:

VIOLATION	STATUTORY AUTHORITY	APPLICABLE PENALTY
Failure to Provide Rest Periods	Labor Code § 226.7	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Provide Meal Periods	Labor Code §§ 226.7, 512	\$100 for each aggrieved employee per pay period for the

VIOLATION	STATUTORY AUTHORITY	APPLICABLE PENALTY
		initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Pay Minimum Wages	Labor Code §§ 1194, 1197, 1197.1	\$100 for each underpaid employee for each pay period for which the employee is underpaid, and \$250 for each underpaid employee for each pay period for which the employee is underpaid. <i>See</i> Cal. Lab. Code § 1197.1(a)(1)-(2).
Failure to Pay Overtime Wages	Labor Code §§ 510, 1194	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Pay Earned Wages	Labor Code §§ 201, 202, 203	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Provide Accurate Itemized Wage Statements	Labor Code § 226	\$250 per employee per violation in an initial citation, and \$1,000 per employee for each violation in a subsequent citation. <i>See</i> Cal. Lab. Code § 226.3.

61. Plaintiffs are entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code § 2699(g)(1).

XIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment against Defendants, and each of them, in an amount according to proof but estimated to be no less than \$1,000,000 as follows:

As to All Causes of Action:

1. For general damages, according to proof on each cause of action for which such damages are available.
2. For special damages, according to proof on each cause of action for which such damages are available.
3. For compensatory damages, according to proof on each cause of action for which such damages are available.
4. For injunctive relief that the Court deems proper and just.
5. For prejudgment interest and post-judgment interest according to law.
6. For reasonable attorneys' fees incurred in this action.
7. For costs of suit incurred in this action.
8. For such other and further relief that the Court deems proper and just.

As to First Cause of Action:

9. For one additional hour of pay at Plaintiffs' regular rate of compensation for each work day that the meal or rest or recovery period was not provided pursuant to Labor Code section 226.7.

As to Second Cause of Action:

10. For one additional hour of pay at Plaintiffs' regular rate of compensation for each work day that the meal or rest or recovery period was not provided pursuant to Labor Code section 226.7.

As to Third Cause of Action:

11. For civil penalties, restitution of wages, and liquidated damages pursuant to Labor Code section 1197.1(a).
12. For interest pursuant to California Labor Code section 1194.2(a).
13. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 218.5(a) and 1194(a).
14. For costs of suit incurred in this action pursuant to California Labor Code section 218.5(a) and 1194(a).

As to Fourth Cause of Action:

15. For the unpaid balance of the full amount of Plaintiffs' overtime compensation, including interest thereon, pursuant to Labor Code section 1194(a).

16. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 1194(a).

17. For costs of suit incurred in this action pursuant to California Labor Code section 1194(a).

As to Fifth Cause of Action:

18. For wages earned and unpaid at the time of discharge pursuant to Labor Code sections 201 and 202.

19. For waiting time penalties pursuant to Labor Code section 203(a).

20. For reasonable attorneys' fees incurred in this action pursuant to Labor Code section 218.5(a).

21. For costs of suit incurred in this action pursuant to Labor Code section 218.5(a).

As to Sixth Cause of Action:

22. For penalties pursuant to California Labor Code section 226(e)(1).

23. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 226(e)(1).

24. For costs of suit incurred in this action pursuant to California Labor Code section 226(e)(1).

As to Seventh Cause of Action:

25. For reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief pursuant to Labor Code section 233(d).

26. For reasonable attorneys' fees and costs pursuant to Labor Code section 233(e).

As to Eighth Cause of Action:

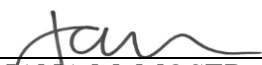
27. For penalties pursuant to California Labor Code section 2699(f)(2).

28. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 2699(g)(1).

1 29. For costs of suit incurred in this action pursuant to California Labor Code section
2 2699(g)(1).

3
4 Dated: January 26, 2022

MOSER LEGAL, PC
CADRY LAW GROUP, PC

5
6 By: 
7 JANA M. MOSER
RYAN S. CADRY

8 Attorneys for Plaintiffs
9 CESARIO CHAVARRIA,
10 FIDELIO CHAVARRIA,
11 JONATHAN PEREZ, and
12 BYRON ALEXANDER POP ELIAS
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Dated: January 26, 2022

By: Jana M. Moser
JANA M. MOSER
RYAN S. CADRY

Attorneys for Plaintiffs
CESARIO CHAVARRIA,
FIDELIO CHAVARRIA,
JONATHAN PEREZ, and
BYRON ALEXANDER POP ELIAS

EXHIBIT A



MOSER LEGAL

November 10, 2021

FILED ONLINE

California Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

SENT VIA CERTIFIED MAIL

Roma Antica Inc.
Attn: Roberto Sbaraglia
286 Magnolia Ave.
Larkspur, CA 94939

Re: Cesario Chavarria, Fidelio Chavarria, Jonathan Perez, and Byron Alexander Pop Elias's Notice of Intent to File Lawsuit Seeking Penalties Under The Private Attorneys General Act, Labor Code section 2698 et seq.

Dear Sir or Madam:

Cesario Chavarria ("Chavarria"), Fidelio Chavarria, Jonathan Perez, and Byron Alexander Pop Elias (collectively, "Plaintiffs") have retained my firm and Cadry Law Group, PC in connection with their potential lawsuit against their former employer, Roma Antica Inc. ("Roma"). Plaintiffs intend to seek penalties for violations of the California Labor Code, which are recoverable under the Labor Code Private Attorneys General Act of 2004 (the "PAGA"), California Labor Code section 2698 et seq. Plaintiffs will be seeking penalties on behalf of themselves and other aggrieved or similarly situated employees that worked for Roma in the State of California. Pursuant to California Labor Code section 2699.3(a), this letter constitutes notice of the specific provisions of the Labor Code alleged to have been violated and the facts and theories to support the alleged violations.

Roma is a restaurant specializing in Italian cuisine. Currently, Roma operates in two locations within California in San Francisco County and Marin County. Plaintiffs performed work for Roma at the San Francisco County restaurant located at 3242 Scott Street, San Francisco, California, 94123 and Marin County restaurant located at 286 Magnolia Avenue, Larkspur, California 94939. Plaintiffs and other aggrieved employees were employed by Roma from the beginning of the statute of limitations through the present; however, Cesario Chavarria's employment terminated in or about August 2021, Fidelio Chavarria's employment terminated

in or about July 2021, Jonathan Perez's employment terminated in or about September 2021, and Byron Alexander Pop Elias's employment terminated in or about July 2021.

Employees working for Roma were (and continue to be) routinely forced to work without ten-minute rest periods for every four hours worked or major fraction thereof. These rest periods were either not provided at all, or were interrupted. Additionally, employees working for Roma were (and are) routinely forced to work without uninterrupted meal periods of not less than 30 minutes for work periods exceeding five hours. These meal periods were either not provided at all, or were interrupted. To the extent that employees were forced to work off-the-clock (whether through their rest and meal periods or otherwise), they further were not paid minimum wages for all hours worked, regular wages for all hours worked, overtime wages for all overtime hours worked, and were not provided with accurate itemized wage statements.

Roma further misclassified Cesario Chavarria and other similarly situated employees as exempt instead of non-exempt. To be "primarily" engaged in duties that meet the test of an executive position, the employees must have spent more than one-half of their work time engaged in those duties. Lab. Code § 515(e). In Cesario Chavarria's case, he spent most of his time prepping food and cooking lunch and dinner. Specifically, he arrived at 10:00 a.m. and "set up the line" by prepping food until it was time to cook lunch. Chavarria cooked lunch from 12:00 p.m. until 3:00 p.m. After lunch, Chavarria ordered the necessary food supplies until 4:00 p.m. when he started prepping for dinner. Chavarria cooked dinner from 5:00 p.m. until 10:00 p.m. Once dinner ended, Chavarria handled janitorial duties until his shift ended around 11:00 p.m. Although his job title was "chef," Chavarria spent most of his time engaged in the duties of a line cook. While Chavarria was responsible for training and supervising employees, he did not spend more than one-half of his work time engaged in those duties.

Chavarria and other similarly situated employees were also misclassified because they did not exercise authority to hire and fire employees, and they did not provide recommendations about hiring, firing, and promotions that were given "particular weight." According to Chavarria, Alessandro Vasselli ("Vasselli"), a partner, was responsible for hiring and firing employees and these duties were not part of Chavarria's duties. There were times Vasselli asked for Chavarria's opinion, but it was not often, and Vasselli did not rely on his opinions.

Cesario Chavarria is informed and believes that other employees, including those with the job title of "chef," were likewise misclassified as exempt instead of non-exempt. Because these employees were misclassified, they were not paid minimum wages, regular wages, nor overtime wages for all hours beyond an eight-hour day and/or 40-hour week. Additionally, these employees are owed compensation for failure to provide accurate itemized wage statements, as well as failure to pay all wages earned and unpaid at the time of discharge and/or quitting. Additionally, these employees are owed compensation for their missed rest and/or meal periods, as set forth above.

The foregoing constitutes a violation of a number of state laws and regulations including, but not limited to, the following:

A. Failure to Provide Rest Periods in Violation of Labor Code § 226.7

Industrial Welfare Commission Wage Order No. 5, section 12, provides: “(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

California Labor Code section 226.7 provides: “If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including, but not limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employer’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Lab. Code § 226.7.

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not provided with rest periods for every four hours worked and were not compensated therefor.

B. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512

Industrial Welfare Commission Wage Order No. 5, section 11, provides: (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties and on-the-job paid meal period is agreed to. . . . (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

California Labor Code section 512 provides, “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.” Lab. Code § 512(a).

California Labor Code section 226.7 provides: "If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including, but not limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employer's regular rate of compensation for each work day that the meal or rest or recovery period is not provided." Lab. Code § 226.7.

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not provided with uninterrupted meal periods of not less than 30 minutes for every work period of more than five hours per day.

C. Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1

Labor Code § 1194 provides, "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

Labor Code § 1197 provides, "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity." Lab. Code § 1197.

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.00) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated

damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Lab. Code § 1197.1(a)(1)-(3).

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not paid minimum wages for all hours worked. Further, Cesario Chavarria and other similarly situated employees were misclassified as exempt rather than non-exempt and, as a result, were not paid minimum wages, regular wages, and overtime wages for all hours including those beyond an eight-hour day and/or 40-hour week.

D. Failure to Pay Overtime Wages in Violation of Labor Code §§ 510, 1194

Labor Code section 510 provides, “Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Lab. Code § 510(a).

Pursuant to California Labor Code section 1194, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than . . . the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” Lab. Code § 1194(a).

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not paid overtime wages for all overtime hours worked. Further, Cesario Chavarria and other similarly situated employees were misclassified as exempt rather than non-exempt and, as a result, were not paid minimum wages, regular wages, and overtime wages for all hours including those beyond an eight-hour day and/or 40-hour week.

E. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226

Employers are required by California Labor Code section 226(a) to furnish accurate itemized wage statements semimonthly, or at the time of each payment of wages, which show:

(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Lab. Code § 226(a).

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not provided with accurate itemized wage statements setting forth their gross wages earned, total hours worked by the employee, net wages earned, and the applicable hourly rates in effect during the pay period with the corresponding number of hours worked at each hourly rate.

F. Failure to Pay Earned Wages in Violation of Labor Code §§ 201, 202, 203

Pursuant to California Labor Code section 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a).

Pursuant to California Labor Code section 202, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Cal. Lab. Code § 202(a).

Pursuant to California Labor Code section 203, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 [and] 202 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a

penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Cal. Lab. Code § 203(a).

As set forth in greater detail above, during the course of their employment with Roma, Plaintiffs and other aggrieved employees were not paid all wages earned and unpaid at the time of discharge and/or quitting. To the extent Plaintiffs and other aggrieved employees resigned or were terminated during the relevant period, Roma is further liable for violation of Labor Code sections 201, 202, and 203.

G. Failure to Properly Classify Non-Exempt Employees in Violation of Labor Code § 226.8

California Labor Code section 226.8 makes it unlawful to “willfully” misclassify individuals as independent contractors. Cal. Lab. Code § 226.8(a)(1). “‘Willful misclassification’ means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” Cal. Lab. Code § 226.8(i)(4).

Pursuant to California Labor Code section 226.8, “If . . . a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars and not more than fifteen thousand dollars for each violation, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(b).

Pursuant to California Labor Code section 226.8, “If . . . a court issues a determination that a person or employer has engaged in any of the enumerated violations in subdivision (a) and the person or employer has engaged in or is engaged in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars and not more than twenty-five thousand dollars for each violation, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).

As set forth in greater detail above, during the course of their employment with Roma, Cesario Chavarria and other similarly situated employees were misclassified as exempt when in fact they should have been classified as non-exempt. This constitutes a violation of Labor Code section 226.8.

* * *

Plaintiffs are sending this communication to ensure compliance with the exhaustion reporting requirements of Labor Code section 2699.3. Please advise this office within the 60-day statutory period if your office will be investigating these matters. Please do not hesitate to contact me with any questions or concerns.

Roma may be contacted at the following addresses:

Roma Antica Inc.
286 Magnolia Avenue
Larkspur, CA 94939

Roma Antica Inc.
3242 Scott Street
San Francisco, CA 94123

The contact information for myself and Cadry Law Group, PC is:

Jana M. Moser
Moser Legal, PC
555 West Fifth Street, 35th Floor
Los Angeles, CA 90013
(310) 295-0142

Ryan S. Cadry
Cadry Law Group, PC
16501 Ventura Blvd., Suite 610
Encino, CA 91436
(818) 849-5962

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jana', with a stylized, flowing script.

Jana M. Moser
Moser Legal, PC

cc: Ryan S. Cadry

Jana Moser

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, November 10, 2021 12:28 PM
To: Jana Moser
Subject: Thank you for submission of your PAGA Case.

11/10/2021

LWDA Case No. LWDA-CM-851947-21

Law Firm : Moser Legal, PC

Plaintiff Name : Cesario Chavarria, Fidelio Chavarria, Jonathan Perez, Byron Alexander Pop Elias

Employer: Roma Antica Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of

Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

U.S. Postal Service **Certified Mail Receipt**

ARTICLE NUMBER: 9414 8116 9900 0865 2268 38

ARTICLE ADDRESSED TO:

Roma Antica Inc.
Attn: Roberto Sbaraglia
286 Magnolia Ave.
Larkspur CA 94939-2076

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