

March 18, 2022

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Maria O. Gamez and Maria De La Torre on Behalf of
Themselves and Aggrieved Employees Under California Labor section
2699.3

Employer: El Gallo Giro Corporation
12764 Florence Avenue
Santa Fe Springs, CA 90670

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Maria O. Gamez’s (“Ms. Gamez”) and Maria De La Torre’s (“Ms. Torre,” collectively with Ms. Gamez, “Employees”) employment with Employees’ former employers: El Gallo Giro Corporation. Ms. Gamez was employed as a non-exempt employee of El Gallo Giro Corporation with duties that included, but were not limited to, baking bread and pastries, as well as preparation of other food items from approximately the October of 2014 and through approximately January of 2022. Ms. Torre was employed as a non-exempt employee of El Gallo Giro Corporation with duties that includes, but were not limited to, baking bread and pastries from approximately September of 2014 to approximately February of 2022. In connection with the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employees seek to represent all employees of El Gallo Giro Corporation, as well as its parents, subsidiaries and affiliates (hereinafter, collectively, “Employer”). On all other claims mentioned herein, Employees seek to represent only non-exempt employees of Employer.

Employees and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employees are informed and believe, and based thereon allege, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and

leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employees and other aggrieved employees. Consequently, Employees are informed and believe, and based thereon allege, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employees and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employees are informed and believe, and based thereon allege, that Employer had and has a practice or policy of failing to compensate Employees and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employees and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employees are informed and believe, and based thereon allege, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employees and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employees are informed and believe, and based thereon allege, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not

providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employees are informed and believe, and based thereon allege, that Employer violated Labor Code section 512, entitling Employees and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employees are informed and believe that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employees are informed and believe, and based thereon allege, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employees and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employees are informed and believe, and based thereon allege, that Employees and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employees are informed and believe that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employees are informed and believe, and based thereon allege, that Employer maintains policies or practices of failing to permit Employees and other aggrieved employees from taking cooldown rest periods in the shade as required under California Code of Regulations, Title 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable for civil penalties under Labor Code sections 558 and 2699.

In addition to the above, Employees are informed and believe, and based thereon allege that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employees and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employees and other aggrieved employees upon request. This would entitle Employees and other aggrieved employees to penalties

prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employees are informed and believe, and based thereon allege, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employees and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employees and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employees are informed and believe, and based thereon allege, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employees and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employees are informed and believe, and based thereon allege, that Employer has or had a policy or practice of unlawfully deducting wages by issuing in payment of wages due, or to become due, or as an advance on wages to be earned: an order, check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some established place of business in the state), the name and address of which must but did not appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment or any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Employees are further informed and believe, and based thereon allege, that such wages were not compensated at the "regular rate" of compensation as provided under Labor Code sections 226.7 and 510, subsection (a). Consequently, Employees are informed and believe, and based thereon allege, that Employees and other aggrieved employees are entitled to relief under, without limitation, Labor Code sections

212, 213, 226.7, and 510 subsection (a). Employer would thus be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employees are further informed and believe, and based thereon allege that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employees and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employees are informed and believe that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employees are additionally informed and believe that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employees are informed and believe, and based thereon allege that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employees and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer is liable to reimburse Employees and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employees are further informed and believe, and based thereon allege, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Employees and other aggrieved employees to damages in the amount of the deposit and accrued interest. Employer would also be liable for civil penalties under Labor Code sections 558 and 2699.

Employees are further informed and believe, and based thereon allege, that Employer has or had a policy or practice of failing to provide Employees and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.*, Employees are further informed and believe that Employer also did not permit its use upon request by Employees and other aggrieved employees as contemplated under California and local laws. Employees are additionally

informed and believe that the notice requirement of Labor Code section 246 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month." Employees are informed and believe and based thereon allege that Employer did not and do not pay Employees and other aggrieved employees in accordance with Labor Code Section 204. As such, Employees are informed and believe, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employees are informed and believe, and based thereon allege that Employer had and has a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employees are informed and believe, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employees are further informed and believe, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of preventing Employees and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employees are informed and believe that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of

the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employees are informed and believe, and based thereon alleges that Employer had and has a policy or practice of preventing Employees and/or other aggrieved employees from disclosing violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employees are informed and believe that these policies and/or practices prevent Employees and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of preventing Employees and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employees are informed and believes that this lawful conduct includes the exercise of Employees' and/or other aggrieved employees' constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and use practices, means, methods, operations and processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of requiring or permitting employees to go or be in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403. Employees are informed and believe, and based thereon allege that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by Employees and/or other aggrieved employees; failing to provide adequate protection equipment to Employees and/or other aggrieved employees; and failing to provide adequate distance in working conditions between Employees and/or other aggrieved employees.

Employees are informed and believe, and based thereon allege that Employer had and has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the

Covid-19 exposure within one business day of receiving notice of potential Covid-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. Employees are informed and believe that numerous employees contracted Covid-19 during the relevant time periods, but that Employer failed to provide notice to employees. Employees are additionally informed and believe that Defendant does not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

Specifically, Employees are informed and believe, and based thereon allege, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to provide written notice to Employees and other aggrieved employees, or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Furthermore, Employees are informed and believe, and based thereon allege, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to provide Employees and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. Employees are informed and believe, and based thereon allege, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Additionally, Employees are informed and believe, and based thereon allege, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to notify Employees and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards. Employees are informed and believe, and based thereon allege, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Moreover, Employees are informed and believe, and based thereon allege, that Employer had and has a practice or policy of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

Employees are informed and believe, and based thereon allege, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Employees are informed and believe, and based thereon allege that Employer violated section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

Employees are further informed and believe, and based thereon allege that Employer had and has a policy or practice of requiring, as a condition of employment, its applicants or employees to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act or the Labor Code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation, in violation of Labor Code section 432.6. Employees are additionally informed and believe that Employer knew that requiring such a condition was prohibited by law. Accordingly, for violations of Labor Code sections 432.5 and 432.6, Employees and aggrieved employees are entitled to attorneys' fees, an injunction, as well as civil penalties pursuant to Labor Code section 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employees may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ Diego Aviles
Diego Aviles

cc: El Gallo Giro Corporation (via U.S. Certified Mail, Return Receipt Requested)