

1 Rene Potter, SBN 301971
2 **POTTER HANDY, LLP**
3 8033 Linda Vista Road, Suite 200
4 San Diego, CA 92111
5 Phone: (858) 375-7385; Fax: (888) 422-5191
6 Email: ReneP@PotterHandy.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 06 2020

BY Mayela Montez
MAYELA MARTINEZ, DEPUTY

7 Attorneys for Plaintiff JULIA RETTIG, AGGRIEVED EMPLOYEES

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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11
12 JULIA RETTIG an individual, on
13 behalf of herself and the State of
14 California, as a private attorney
15 general, and on behalf of all others
16 similarly situated,

17 Plaintiff,

18 vs.
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20 SHAWCOR PIPE PROTECTION,
21 LLC, a Delaware Limited Liability
22 Company; and DOES 1-100,
23 inclusive,

24 Defendant(s).
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CIVDS 2022036
CASE NO:

[UNLIMITED] COMPLAINT FOR DAMAGES

1. Sex/Gender discrimination in Violation of Cal. Gov't Code § 12940(a)
2. Harassment/hostile work environment in Violation of Cal. Gov't Code § 12940(j)(1)
3. Retaliation in Violation of Cal. Gov't Code § 12940(h)
4. Failure to prevent discrimination, harassment and retaliation in Violation of Cal. Gov't Code § 12940(k).

By Fax

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5. Failure to provide meal breaks and pay premium wages for missed meal periods in violation of Labor Code § 512 and Section 11 of the Industrial Welfare Commission Order No. 4-2001
6. Failure to provide rest breaks and pay premium wages for missed rest breaks in violation of Section 12 of Industrial Welfare Commission Order No. 4-2001
7. Failure to pay minimum/overtime wages in violation of Cal. Labor Code §§ 510 and 1194 and Industrial Welfare Commission Order No. 4-2001.
8. Failure to pay wages due and payable in violation of Cal. Labor Code §§ 201 and 203
9. Failure to pay wages in a timely manner in violation Cal. Labor Code § 204(b)
10. Failure to reimburse all expenses in violation of Cal. Labor Code §2802
11. Failure to provide complete and accurate wage statements in violation of Cal. Labor Code § 226(a)

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2 12. Retaliation in Violation of Cal.
3 Labor Code § 98.6

4 13. Retaliation in Violation Cal.
5 Labor Code §1102.5

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7 14. Wrongful termination in
8 violation of public policy

9 15. Negligent Hiring, Retention and
10 Supervision of an employee

11 16. Unfair Business Practices in
12 Violation of Cal. Business & Prof.
13 Code §§ 17200, et seq.

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15 17. PAGA Penalties for various Labor
16 Code violations (Labor Code
17 §§2698-2699.5)

18 **DEMAND FOR JURY TRIAL**

19
20 Plaintiff JULIA RETTIG, an individual, on behalf of herself and people of
21 the State of California as an “aggrieved employee” acting as a private attorney
22 general under the Labor Code Private Attorneys General Act of 2004, § 2698,
23 *et seq.* (“PAGA”), on information and belief, makes the following allegations to
24 support her unverified Complaint.
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1 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* Defendants
2 retaliated against Plaintiff and terminated her employment solely because she
3 engaged in protected reporting activities and thereby caused her emotional
4 distress. By their actions, Plaintiff is seeking damages, attorneys' fees and costs;
5 and injunctive relief pursuant to the claims alleged in her Complaint.
6

7 4. This is also a representative action brought pursuant to Labor Code
8 § 2699, *et seq.*, on behalf of the State of California on behalf of the group of
9 aggrieved employees defined as:

10 all individuals who were employed by Shawcor Pipe Protection LLC or its predecessor
11 or merged entities in California as hourly, non-exempt employees, from June 30,
12 2019 and continuing into the present (hereinafter referred to as "all aggrieved
13 employees").

14 5. Plaintiff, on behalf of herself and all aggrieved employees presently
15 or formerly employed by Defendants during the PAGA Period (June 30, 2019
16 and ongoing), brings this representative action pursuant to Labor Code § 2699, *et*
17 *seq.* seeking penalties for Defendants' violations of the California Labor Code §§
18 201, 203, 204b, 512, and IWC Wage Order No. 4-2001 Section 11 - 12 for
19 failure to pay wages due and payable, failure to pay wages in a timely manner,
20 failure to provide meal and rest breaks, and failure to pay premium wages for
21 missed meal and rest breaks respectively; failure to provide accurate and
22 complete wage statements in violation of Cal. Labor Code § 226; retaliation in
23 violation of California Labor Code §§ 98.6 and 1102.5; and failure to produce
24 Plaintiff's personnel file in violation of California Labor Code § 1198.5.
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1 protection solutions and services. At all times mentioned herein Shawcor Pipe
2 Protection, LLC was an "employer" of Plaintiff within the meaning of the
3 California Labor Code and is a "person" as defined by Cal. Bus. & Prof. Code §
4 17021. Shawcor Pipe Protection, LLC is, and at all times mentioned herein was,
5 an "employer" of Plaintiff within the meaning of California Government Code
6 §12926(d) of the California Fair Employment & Housing Act. In doing the acts
7 herein alleged, Defendant's employees, subcontractors, and agents acted within
8 the course and scope of their employment and agency with Defendant, and
9 engaged in the acts alleged herein and/or conducted, permitted, authorized,
10 and/or ratified the conduct of its employees, subcontractors, and agents, and is
11 vicariously liable for the wrongful conduct of its employees, subcontractors, and
12 agents alleged herein.
13

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15 11. Defendants DOES 1 through 100, inclusive, are other possible
16 Defendants responsible for the wrongful conduct alleged herein. The true names
17 and capacities of Defendants named herein as DOES 1 through 100, inclusive,
18 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff
19 who therefore sues such Defendants by such fictitious names pursuant to
20 California Code of Civil Procedure § 474. Plaintiff is informed and believes that
21 the DOE Defendants are California residents. Plaintiff will amend her
22 Complaint to show true names and capacities when they have been determined.
23 Plaintiff is informed and believes, and on the basis of such information and belief
24 alleges, that each Defendant DOE herein is in some manner responsible for the
25 various labor code violations, including rest and meal break violations, wage and
26 hour violations, retaliation against and wrongful termination of Plaintiff due to
27 her protected reporting activities, and damages herein alleged.
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1 12. Defendants SHAWCOR PIPE PROTECTION, LLC. and DOES 1
2 through 100, inclusive, are hereinafter referred to collectively as "Defendants"
3 unless otherwise specifically identified.

4 13. Plaintiff is informed and believes and thereon alleges that each
5 Defendant is, and at all times mentioned was, the agent, employee or
6 representative of each other Defendant. Each Defendant, in doing the acts, or in
7 omitting to act as alleged in this Complaint, was acting within the scope of his or
8 her actual or apparent authority, or the alleged acts and omissions of each
9 Defendant as an agent were subsequently ratified and adopted by each other
10 Defendant as a principal. Plaintiff is further informed and believes, and based
11 thereon alleges, that each Defendant, acting as the agent of the other
12 Defendants, carried out a joint scheme, business plan or policy in all respects
13 pertinent hereto, and the acts of each Defendant are legally attributable to the
14 other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff and the other aggrieved employees.
16

17 14. California courts have recognized that the definition of "employer"
18 for purposes of enforcement of the California Labor Code goes beyond the
19 concept of traditional employment to reach irregular working arrangements for
20 the purpose of preventing evasion and subterfuge of California's labor laws.
21 [Martinez v. Combs (2010) 49 Cal. 4th 35, 65]. As such, anyone who directly or
22 indirectly, or through an agent or any other person, engages, suffers, or permits
23 any person to work or exercises control over the wages, hours, or working
24 conditions of any person, may be liable for violations of the California Labor
25 Code as to that person. Cal. Labor Code § 558.1.
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1 complete their work duties and responsibilities. Ms. Rettig would report her
2 overtime to the plant accountant, and she would get upset. This made Ms. Rettig
3 reluctant to tell the plant accountant when she worked overtime, so she felt
4 bullied into not reporting some of it. Thus, Ms. Rettig and all aggrieved
5 employees were not paid overtime wages for all the additional hours they
6 worked.
7

8 20. In addition to the above, Ms. Rettig and all aggrieved employees had
9 no choice but to regularly use their personal vehicles to run company errands
10 without reimbursement.

11 21. Ms. Rettig was regularly required to check and respond to emails in
12 the evenings and weekends, time she was never paid for. on information and
13 belief, and based thereon, all aggrieved employees were also required to work
14 and/or check and respond to work emails after hours or on the weekend and
15 were not paid for those hours worked at any time.
16

17 22. Further, Ms. Rettig and all aggrieved employees were required to
18 use their personal cell phones for Defendants' business without being
19 reimbursed. To date, Ms. Rettig has not been reimbursed for these personal
20 expenses incurred and borne by her in direct consequence of discharge of her
21 duties and in the course of her employment. Similarly, on information and belief,
22 all aggrieved employees have not been reimbursed for the expenses incurred and
23 borne by them in direct consequence of discharge of their duties and in the
24 course of their employment.
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1 **Discrimination, Retaliation and Harassment**

2 23. On or about December 12, 2018, Ms. Rettig noticed that
3 Defendant's Accountant, Jovita Montezuma, aka "Chicki," a long-term employee
4 of 27 (twenty-seven) years, was making personal purchases with Respondent's
5 commercial Home Depot account, which she believed to be illegal.
6

7 24. When Ms. Rettig asked Chicki about the purchases, Chicki provided
8 several inconsistent explanations for the personal transactions. Chicki's first
9 explanation was that the purchases were gifts to be handed out at the company's
10 holiday party. However, this explanation was not plausible, as gifts were not
11 handed out at the event. On another occasion, Chicki stated that the gifts were
12 not handed out at the holiday party because "things got too busy" and she
13 planned to return them. At a later date, Chicki provided a third explanation in
14 which she confessed to inadvertently using the company's commercial card to
15 make the purchases instead of her own personal card and that she intended to
16 reimburse the company card. Upon information and belief, Chicki paid for the
17 personal transaction manually and outside of the accounts payable system.
18

19 25. In approximately June 2019, Chicki informed Ms. Rettig that she
20 was aware "they" were watching her manual payments closely, stating, "I have to
21 be careful" or words to that effect. Ms. Rettig was concerned by this information
22 and considered reporting the suspicious activity to management.
23

24 26. Meanwhile, in or around August 2019, Ms. Rettig noticed the
25 company had exceeded their budgeting limits as she worked in Purchasing.
26 During this same billing period, Ms. Rettig was instructed not to order safety
27 equipment and to postpone necessary repair orders. On more than one occasion,
28 Ms. Rettig overheard both plant managers, Mohammad Shoeb and Darcy

1 McGarry state, "If an inspector were to show up, they would shut us down" or
2 words to that effect.

3 27. On or about September 30, 2019, Chicki complained to
4 management about Ms. Rettig in retaliation of Ms. Rettig's questioning of
5 Chicki's personal purchases on the company corporate card. On or about October
6 1, 2019, Ms. Rettig reported Chicki's suspicious activities to Human Resource
7 Department Generalist, Jordan Gibbons. Ms. Rettig stated her belief that Chicki
8 was stealing from the company.
9

10 28. Part of Ms. Rettig's duties included using a company truck to run
11 errands. The truck she drove had a new safety detector installed on it which was
12 extremely and unreasonably sensitive. In or around September or October 2019,
13 Ms. Rettig complained about settings for the safety violation detector on the
14 company truck, and that when she drove it, she frequently heard the system beep
15 which would scare her and stress her out, making driving less safe. Ms. Rettig
16 reported the touchy safety settings to her supervisor and plant manager, Darcy
17 McGarry, who flippantly dismissed her report by describing the setting flaw as
18 "minor."
19

20 29. Due to the sensitive safety settings, every time Ms. Rettig was forced
21 to drive the company truck, she suffered extreme anxiety and shook
22 uncontrollably. Ms. Rettig drove the vehicle very slowly to avoid triggering the
23 monitoring system. Ms. Rettig was so afraid of driving the vehicle that she
24 sometimes took her own personal vehicle to complete the company errands.
25

26 30. On one specific occasion, Ms. Rettig drove the company truck a
27 distance of ten (10) miles to complete a company errand. During the short drive,
28 the safety violation alarm was triggered three (3) times. One was for driving 1/4

1 of a second too close to the car in front of her and another was for not braking
2 "super softly" when a light turned yellow. Ms. McGarry would note these
3 "violations" and appeared bent on finding every flaw in Ms. Rettig's driving to
4 create a record against her. The following day, Ms. Rettig called in sick because
5 she knew she was expected to drive the company truck throughout the day and
6 was still extremely stressed from the day before.
7

8 31. Ms. Rettig complained multiple times to Ms. McGarry, Ramon
9 Alban, the plant superintendent, and Tyrus Jackson, the HSE Manager, about the
10 flawed safety system and the stress she endured each time she operated it. On
11 information and belief, no changes were implemented to the system, as Ms.
12 Rettig was forced to continue to drive the company vehicle and endure the
13 incessant and unpredictable alarm, which was distracting and stressful and made
14 driving unsafe.
15

16 32. At one point, Ms. McGarry called Ms. Rettig "argumentative" for
17 reporting these things. Ms. Rettig had witnessed other male workers reporting
18 similar difficulties they had faced but Ms. McGarry appeared to be sympathetic
19 and willing to resolve their concerns. Based on information and belief, Ms.
20 McGarry viewed Ms. Rettig as argumentative and a troublemaker because she
21 was a female driver as opposed to other male workers reporting similar issues
22 because she was partial towards Defendants' male employees. Thereafter, it
23 became increasingly clear that Ms. McGarry saw Ms. Rettig as a trouble maker
24 for voicing her concerns of safety and Chicki's potential theft of company money.
25 As a result of the stress and harassment, Ms. Rettig did not know how she was
26 going to be able to do her job.
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1 33. On or about October 1, 2019, Ms. Rettig reported to Human
2 Resources Representative, Jordan Gibbons ("Ms. Gibbons") that she had reason
3 to believe that Ms. Montezuma was stealing from Defendants and referred to the
4 fraudulent transactions she had noticed. On information and belief, Shawcor did
5 not investigate Ms. Rettig's complaint. On further information and belief, Chicki
6 instead recommended terminating Ms. Rettig's employment.
7

8 34. One month later, on or about November 1, 2019, Ms. McGarry
9 summoned Ms. Rettig to her office. During the meeting, Ms. McGarry informed
10 Ms. Rettig that she was being "laid off" due to a "downturn in work projects." In
11 response, Ms. Rettig stated, "Looks like Chicki got what she wanted," in
12 reference to Chicki's numerous complaints about Ms. Rettig. Ms. McGarry
13 handed Ms. Rettig her final pay check and asking her to gather her things from
14 the office. Ms. Rettig was devastated at the sudden loss of her job. Shawcor's
15 decision to terminate Ms. Rettig's employment on the pretext of a "lay-off" was a
16 direct result of her reporting unsafe working conditions and rule/policy
17 violations a few weeks before. She experienced stress, anxiety and depression
18 during her employment, including in part due to the unsafe working condition
19 she was forced to endure. Notably, she never had a performance review despite
20 requesting one repeatedly during the course of her employment and having no
21 performance issues. Pertinently, Chicki has a pattern of harassing other female
22 employees, and has stated that she does not like working with females. On
23 information and belief, ShawCor nevertheless continues to employ Chicki and
24 has terminated at least two women employees that Chicki was harassing.
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27 35. As a result of Defendants' discriminatory, harassing, and retaliatory
28 conduct, Ms. Rettig has suffered severe emotional distress and financial harm

1 and has been unable to obtain a comparable position in title and/or
2 compensation, despite a diligent search. Her self-image as a proud, honest, and
3 ethical employee has been destroyed, and her confidence is gone. Her
4 termination by Shawcor and the resulting humiliation has greatly exacerbated
5 Ms. Rettig's depression and she will likely need an increased dose of medication.
6 She is now seeking therapy on a regular basis to cope with the extreme depression
7 resulting from the termination and the discrimination and retaliation she
8 experienced during her employment. To date, Ms. Rettig continues to suffer from
9 depression, stress and anxiety as she continues to meet rejections from potential
10 employers. Further, her quality of life has been greatly reduced.
11

12 **FIRST CAUSE OF ACTION**

13 **Sex/Gender Discrimination in Violation of Cal. Gov't Code § 12940(a)** 14 15 **(Against All Defendants)** 16

17 36. Plaintiff realleges and incorporates by reference, as though fully set
18 forth herein, each and every allegation set forth above.

19 37. Cal. Gov't Code § 12940(a) makes it an unlawful employment
20 practice for any employer to discriminate against an employee and/or otherwise
21 deny the employee the benefits of employment because of their sex / gender.

22 38. SHAWCOR PIPE PROTECTION, LLC is an employer doing
23 business in the State of California, with five or more employees and is therefore
24 subject to the legal mandates of the FEHA. Cal. Gov't Code § 12926(d). As such,
25 SHAWCOR PIPE PROTECTION, LLC is required to refrain from treating
26 employees who are female differently and adversely than other employees.
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1 39. As more fully alleged herein and in violation of California
2 Government Code § 12940, *et seq.*, Defendants, and each of them, discriminated
3 against Plaintiff in employment on grounds that she was a woman. Plaintiff
4 further alleges that her sex/ gender was a substantial motivating reason for
5 Defendants' decision to terminate Plaintiff's employment at Shawcor Pipe
6 Protection, LLC. As alleged hereinabove, Ms. Chicki openly claimed that she did
7 not like working with female workers and had demonstrated a pattern of
8 harassing the Defendants' female employees. Further, she had successfully got
9 two female employees fired by Shawcor. She similarly targeted and discriminated
10 against Ms. Rettig solely due to the fact that she was a woman. After Ms. Rettig
11 discovered Chicki's using Defendants' funds for making personal purchases,
12 Chicki began to target Plaintiff and speaking to her in a threatening manner. She
13 would get upset when Ms. Rettig reported overtime and pressured her into not
14 reporting it, thus preventing Plaintiff from getting paid for all hours she worked.
15 Further, Ms. Chicki retaliated against Ms. Rettig for questioning Ms. Chicki's
16 personal purchases on the company corporate card by making a complaint about
17 Plaintiff to Shawcor's management. Ms. Rettig thereafter reported Ms. Chicki's
18 suspicious financial transactions. Just one month after Ms. Rettig reported Ms.
19 Chicki's fraudulent transactions and policy violations, Defendants terminated
20 Plaintiff's employment on the pretext of a lay-off.
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24 40. Defendants, and each of them, therefore engaged in discrimination
25 based on Ms. Rettig's sex/gender and age in violation of Cal. Gov't Code §
26 12940(a). Defendants further violated Plaintiff's rights to a discrimination free
27 work environment by failing to take all reasonable steps necessary to prevent
28

1 discrimination from occurring as required by California Government Code §
2 12940(k).

3 41. Specifically, Plaintiff, who is female, was subjected to
4 discriminatory treatment on the basis of her sex/gender by Defendants' and their
5 employees, especially Ms. Chicki and one of Shawcor's plant managers, Darcy
6 McGarry. On information and belief, Ms. Chicki recommended terminating
7 Plaintiff's employment in addition to making a retaliatory complaint against Ms.
8 Rettig. Additionally, Shawcor's plant managers also discriminated against Ms.
9 Rettig based on her gender/sex when she complained about the company truck's
10 faulty settings that caused the vehicle alarm to set off. Ms. Rettig needed to drive
11 the company truck to run errands that were part of her job duties. The truck's
12 faulty alarm system would set off frequently and beep very loudly almost every
13 time she drove caused her to feel stressed and anxious, making driving less safe.
14 When Ms. Rettig reported the touchy safety settings to her supervisor and plant
15 manager, Darcy McGarry, she flippantly dismissed her report by describing the
16 setting flaw as "minor." Thus, Ms. Rettig was forced to continue to drive the
17 company vehicle for over a month and endure the incessant and unpredictable
18 alarm, which was distracting and stressful and made driving unsafe. At one point,
19 Ms. McGarry called Ms. Rettig "argumentative" for reporting these things. Ms.
20 Rettig had witnessed other male workers reporting similar difficulties they had
21 faced but Ms. McGarry appeared to be sympathetic and willing to resolve their
22 concerns. On information and belief, Ms. McGarry discriminated against Ms.
23 Rettig because she was a female driver and viewed them negatively while openly
24 displaying favoritism towards Defendants' male employees. Thereafter, it
25 became increasingly clear that Ms. McGarry saw Ms. Rettig as a trouble maker
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1 for voicing her concerns of safety and reporting Chicki's potential theft of
2 company money. No steps were taken by Defendants to resolve the issues.
3 Shortly thereafter, Defendants terminated Plaintiff's employment and
4 perpetuated the discrimination against her due to her sex/gender.

5 42. Plaintiff was subjected to discriminatory treatment on the basis of
6 her sex/gender, when despite her excellent job performance. Plaintiff's
7 employment was terminated in continued discrimination based on Plaintiff's
8 sex/gender.
9

10 43. Defendants, and each of them, therefore engaged in discrimination
11 based on Ms. Rettig's sex/gender in violation of Cal. Gov't Code § 12940(a).

12 44. By aforesaid acts and omissions of Defendants, and each of them,
13 Plaintiff has been directly and legally caused to suffer actual damages including,
14 but not limited to special damages, loss of earnings and future earning capacity,
15 and other pecuniary loss not presently ascertained.
16

17 45. As a further direct and legal result of the acts and conduct of
18 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
19 suffer and continues to suffer emotional and mental distress, trauma, anguish,
20 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
21 exact nature, duration, and extent of said injuries is presently unknown to
22 Plaintiff, but she is informed and believes and thereon alleges that some if not all
23 of the injuries are reasonably certain to be permanent in character.
24

25 46. Plaintiff is informed and believes and thereon alleges that
26 Defendants and their managers, officers, and/or directors committed the acts
27 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
28 intention of injuring Plaintiff and acted with an improper and evil motive

1 amounting to malice or oppression, and in conscious disregard of Plaintiff's
2 rights. Moreover, Defendants and their managers, officers, and/or directors
3 authorized or ratified the wrongful conduct of their employees and/or are
4 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
5 recover punitive damages from Defendants in an amount according to proof. Cal.
6 Civ. Code §3294. As a result of Defendants' discriminatory acts as alleged
7 herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as
8 provided in Section 12965(b) of the California Government Code.
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10 **SECOND CAUSE OF ACTION**

11 **Harassment in Violation of Cal. Gov't Code § 12940(j)(1)**

12 **(Against All Defendants)**

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14 47. Plaintiff realleges and incorporates by reference, as though fully
15 set forth herein, each and every allegation set forth above.

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17 48. Cal. Gov't Code § 12940(j)(1) makes it an unlawful employment
18 practice for any person to harass an employee on the basis of physical or mental
19 disability or medical condition. If the harasser is a supervisor, the employer is
20 liable for the supervisor's conduct. Harassment of an employee by an employee
21 other than an agent or supervisor shall be unlawful if the entity, or its agents or
22 supervisors, knows or should have known of this conduct and fails to take
23 immediate and appropriate corrective action.

24
25 49. As alleged herein, Plaintiff faced harassment from her supervisors.
26 Ms. Chicki, the plant accountant which had been an as well as another female
27 plant manager Ms. McGarry, all of whom she reported to during her
28 employment at Shawcor harassed and discriminated against her due to her

1 gender/sex. Further, Ms. Chicki engaged in pervasive harassment towards Ms.
2 Rettig, including displaying an animus towards her due to the fact that Ms.
3 Rettig was a woman, making a retaliatory complaint against her after Ms. Rettig
4 discovered Ms. Chicki's suspicious financial transactions and questioned her
5 regarding the same, and getting upset with Plaintiff when she reported overtime
6 hours and pressuring her into not reporting it so that Ms. Rettig was not paid for
7 all hours worked in continued discrimination and harassment against Plaintiff.
8 Further, Defendants' plant manager Ms. McGarry harassed Plaintiff due to her
9 sex/gender when she failed to fix the faulty safety settings of the company truck
10 using which was causing Ms. Rettig extreme stress and anxiety. Ms. Rettig was
11 forced to continue to drive the company vehicle and endure the incessant and
12 unpredictable alarm, which was distracting and stressful and made driving
13 unsafe. At one point, Ms. McGarry called Ms. Rettig "argumentative" for
14 reporting these things. Ms. Rettig had witnessed other male workers reporting
15 similar difficulties they had faced but Ms. McGarry appeared to be sympathetic
16 and willing to resolve their concerns due to her bias towards Defendants' male
17 employees. Thereafter, it became increasingly clear that Ms. McGarry saw Ms.
18 Rettig as a trouble maker for voicing her concerns of safety and Chicki's
19 potential theft of company money. Thus, Defendants also denied Plaintiff a safe
20 working environment due to the fact that she was a woman. This harassment
21 made Ms. Rettig extremely stressed and caused anxiety at work, and thereby
22 created a hostile work environment, such that any reasonable employee would
23 feel as if they were in a hostile work environment.
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27 50. When Plaintiff reported Ms. Chicki's suspicious and potentially
28 fraudulent transactions using the Defendants' company corporate card,

1 Defendants terminated Ms. Rettig's employment a month later, effectively
2 punishing Plaintiff for being victimized by Ms. Chicki, instead of addressing Ms.
3 Chicki's harassment and retaliation against Plaintiff. Further, Plaintiff
4 continually reported the unsafe working conditions and the stress and anxiety
5 she had to endure due to the faulty safety settings of the Defendant's truck Ms.
6 Rettig used to perform her job duties. Defendants failed to take any action
7 whatsoever either against Ms. Chicki who continued to harass Ms. Rettig
8 including making a retaliatory complaint or against Ms. McGarry who harassed
9 Plaintiff by intentionally refusing to resolve her persistent complaints regarding
10 the company truck. On information and belief, Defendant failed to investigate
11 any of Plaintiff's complaints. Plaintiff was a hardworking employee who
12 performed all her duties well. Instead of properly investigating Plaintiff's
13 complaints and taking measures to prevent the harassment, discrimination and
14 retaliation against Plaintiff, Defendant terminated Plaintiff under the pretext of
15 a "lay-off" due to a "downturn in work projects."

18 51. Despite Shawcor's actual and constructive knowledge of
19 harassment, hostility, retaliation and discrimination towards Ms. Rettig on
20 account of her sex/gender and reporting activities, they failed and refused to
21 take any remedial measures to prevent the harassment, hostility, retaliation and
22 discrimination from occurring and retaliated against her for engaging in
23 protected reporting activities by terminating her.

25 52. Defendants, and each of them, therefore engaged in severe and
26 pervasive sex/gender-based harassment against Ms. Rettig in violation of Cal.
27 Gov't Code § 12940(j)(1).
28

1 53. By aforesaid acts and omissions of Defendants, and each of them,
2 Plaintiff has been directly and legally caused to suffer actual damages including,
3 but not limited to, loss of earnings and future earning capacity, and other
4 pecuniary loss not presently ascertained.

5 54. As a further direct and legal result of the acts and conduct of
6 defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
7 suffer and continues to suffer emotional and mental distress, trauma, anguish,
8 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
9 exact nature, duration, and extent of said injuries is presently unknown to
10 Plaintiff, but she is informed and believes and thereon alleges that some if not
11 all of the injuries are reasonably certain to be permanent in character.
12

13 55. Plaintiff is informed and believes and thereon alleges that
14 defendants and their managers, officers, and/or directors committed the acts
15 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
16 intention of injuring Plaintiff and acted with an improper and evil motive
17 amounting to malice or oppression, and in conscious disregard of Plaintiff's
18 rights. Moreover, defendants and their managers, officers, and/or directors
19 authorized or ratified the wrongful conduct of their employees and/or are
20 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
21 recover punitive damages from defendants in an amount according to proof.
22 Cal. Civ. Code §3294.
23

24 56. As a result of Defendants' retaliatory and discriminatory acts as
25 alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit
26 as provided in Section 12965(b) of the California Government Code.
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1 “argumentative” and being a “trouble maker”, and wrongfully terminated her
2 in retaliation for engaging in the protected reporting activity on the pretext of a
3 lay off due to “a downturn in work projects.”

4 60. By terminating Plaintiff because she opposed Defendants’
5 unlawful practices and unsafe workplace conditions, Defendants retaliated
6 against Plaintiff in violation of Cal. Gov’t Code § 12940(h).
7

8 61. By aforesaid acts and omissions of Defendants, and each of them,
9 Plaintiff has been directly and legally caused to suffer actual damages including,
10 but not limited to, medical expenses and special damages, loss of earnings and
11 future earning capacity, and other pecuniary loss not presently ascertained.

12 62. As a further direct and legal result of the acts and conduct of
13 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
14 suffer and continues to suffer emotional and mental distress, trauma, anguish,
15 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
16 exact nature, duration, and extent of said injuries is presently unknown to
17 Plaintiff, but she is informed and believes and thereon alleges that some if not
18 all of the injuries are reasonably certain to be permanent in character.
19

20 63. Plaintiff is informed and believes and thereon alleges that
21 Defendants and their managers, officers, and/or directors committed the acts
22 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
23 intention of injuring Plaintiff and acted with an improper and evil motive
24 amounting to malice or oppression, and in conscious disregard of Plaintiff’s
25 rights. Moreover, Defendants and their managers, officers, and/or directors
26 authorized or ratified the wrongful conduct of their employees and/or are
27 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
28

1 recover punitive damages from Defendants in an amount according to proof.
2 Cal. Civ. Code §3294.

3 64. As a result of Defendants' retaliatory and discriminatory acts as
4 alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit
5 as provided in Section 12965(b) of the California Government Code.
6

7 **FOURTH CAUSE OF ACTION**

8
9 **Failure to Prevent Discrimination, Harassment and Retaliation from**
10 **Occurring in Violation of Cal. Gov't Code § 12940(k)**

11 **(Against All Defendants)**

12 65. Plaintiff realleges and incorporates by reference, as though fully
13 set forth herein, each and every allegation set forth in paragraphs above.

14 66. G.C. §12940(k) provides as follows: "It shall be an unlawful
15 employment practice, [f]or an employer, labor organization, employment
16 agency, apprenticeship training program, or any training program leading to
17 employment, to fail to take all reasonable steps necessary to prevent
18 discrimination and harassment from occurring."
19

20 67. As alleged herein, Defendants discriminated, harassed and
21 retaliated against Plaintiff because of her gender/sex, because she requested
22 safe working conditions, because she persistently reported the unsafe working
23 conditions and requested them to be corrected, and because she reported Ms.
24 Chicki's fraudulent financial activities. As a result, Ms. Rettig endured a hostile
25 and stressful work environment. Defendants unlawfully terminated her
26 employment for engaging in protected reporting activities. Defendants further
27 failed and refused to investigate or take any appropriate remedial action or
28

1 measures to prevent the discrimination, retaliation or harassment from
2 occurring, and instead encouraged and ratified the conduct of its managing
3 agents, including Ms. Chicki, a favored employee of over 25 years, and one of
4 Defendants' plant managers, Ms. McGarry. On information and belief, Ms.
5 Chicki and Ms. McGarry remain employed while Plaintiff was wrongfully
6 terminated on a pretext. On further information and belief, no witnesses were
7 interviewed and a proper investigation was not conducted by Shawcor for either
8 of Ms. Rettig's complaints, thereby failing to prevent the discrimination,
9 retaliation and harassment from occurring. By failing to prevent discrimination,
10 retaliation and harassment from occurring, Defendants violated G.C.
11 §12940(k).
12

13 68. By aforesaid acts and omissions of Defendants, and each of them,
14 Plaintiff has been directly and legally caused to suffer actual damages including,
15 but not limited to, medical expenses and special damages, loss of earnings and
16 future earning capacity, and other pecuniary loss not presently ascertained.
17

18 69. As a further direct and legal result of the acts and conduct of
19 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
20 suffer and continues to suffer emotional and mental distress, trauma, anguish,
21 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
22 exact nature, duration, and extent of said injuries is presently unknown to
23 Plaintiff, but she is informed and believes and thereon alleges that some if not
24 all of the injuries are reasonably certain to be permanent in character.
25

26 70. Plaintiff is informed and believes and thereon alleges that
27 Defendants and their managers, officers, and/or directors committed the acts
28 alleged herein maliciously, fraudulently, and oppressively, with the wrongful

1 intention of injuring Plaintiff and acted with an improper and evil motive
2 amounting to malice or oppression, and in conscious disregard of Plaintiff's
3 rights. Moreover, Defendants and their managers, officers, and/or directors
4 authorized or ratified the wrongful conduct of their employees and/or are
5 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
6 recover punitive damages from Defendants in an amount according to proof.
7 Cal. Civ. Code §3294.

9 71. As a result of Defendants' retaliatory and discriminatory acts as
10 alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit
11 as provided in Section 12965(b) of the California Government Code.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to provide meal breaks and pay premium wages for missed meal** 14 **periods in violation of Labor Code § 512 and Section 11 of the Industrial** 15 **Welfare Commission Order No. 4-2001**

16 **(Against all Defendants)**

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18
19 72. Plaintiff realleges and incorporates by reference, as though fully set
20 forth herein, each and every allegation set forth in paragraphs above.

21 73. Under California Labor Code Section 512(a), an employer shall not
22 employ an employee for a work period of more than five hours per day without
23 providing the employee with a meal period of not less than 30 minutes.

24 74. Cal. Labor Code Section 1198 provides that the maximum hours of
25 work and the standard conditions of labor fixed by the commission shall be the
26 maximum hours of work and the standard conditions of labor for employees. The
27 employment of any employee for longer hours than those fixed by the order or
28

1 under conditions of labor prohibited by the order is unlawful.

2 75. Industrial Welfare Commission Order No. 4-2001 regulates wages,
3 hours, and working conditions in professional, technical, clerical, mechanical and
4 similar occupations. Pursuant to its Section 11, subsection (A) that governs meal
5 periods, no employer shall employ any person for a work period of more than five
6 (5) hours without a meal period of not less than 30 minutes. In *Brinker Restaurant*
7 *Corporation v. Superior Court*, (2012) 53 Cal. 4th 1004, the Supreme Court of
8 California held that "The employer satisfies this obligation [to provide a meal
9 period] if it **relieves** its employees of all duty, **relinquishes control** over their
10 activities and **permits them a reasonable opportunity** to take an uninterrupted
11 30 minute break and **does not impede or discourage** them from doing so."
12 (Emphasis added.) Thus, unless the employee is relieved of *all duty* during a 30-
13 minute meal period, the meal period shall be considered an "on duty" meal
14 period and counted as time worked.
15

16 76. Further, pursuant to IWC Order No. 4-2001, Section 11(B),
17 employers are required to pay employees an additional one (1) hour of pay at the
18 employee's regular rate of compensation for each workday that the meal period is
19 not provided in a timely manner. Similarly, pursuant to California Labor Code
20 Section 226.7(c), employers are liable to pay employees one additional hour of
21 pay at their regular rate of compensation for each workday that the meal or rest or
22 recovery period is not provided.
23

24 77. Cal. Labor Code Section 2810.3(a)(1)(A) provides that "client
25 employer" means a business entity, regardless of its form, that obtains or is
26 provided workers to perform labor within its usual course of business from a labor
27
28

1 contractor. Further, Cal. Labor Code Section 2810.3(b) provides that the client
2 employers share all civil legal responsibility and civil liability for all workers
3 supplied by a labor contractor for payment of wages.

4 78. As more fully alleged above, SHAWCOR PIPE PROTECTION, LLC
5 is an employer that was responsible for and controlled all working conditions and
6 day-to-day tasks of Ms. Rettig, including, her meal and rest breaks. Her first meal
7 period was delayed by Defendant beyond five hours. She was often prevented
8 from taking her first meal break after she had worked non-stop for over five
9 hours. Ms. Rettig and all aggrieved employees were not allowed to take fully
10 compliant meal breaks because Defendants did not relieve them of all duties
11 during meal times. They were often forced to work through the meal period even
12 after clocking out for their lunch break. This was a consistent pattern throughout
13 the course of Ms. Rettig's employment. Similarly, all aggrieved employees faced
14 the same issues. During meal breaks, employers must relieve employees of all
15 duty and relinquish any control over employees and how they spend their
16 time.[*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004]
17

18 79. As further alleged hereinabove, Defendants failed in their duty to
19 ensure that Ms. Rettig and all aggrieved employees were paid the premium wage
20 for all missed/non-compliant meal breaks. Pursuant to the ruling of the Court of
21 Appeals of California in *Safeway Inc. v. Superior Court*¹, it is not sufficient for an
22 employer to merely implement a policy that effectively provides compliant meal
23 breaks. The employer must also record the timing and duration of the breaks,
24 and then implement a separate good faith mechanism for determining whether a
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28 ¹ 238 Cal. App. 4th 1138 (2015).

1 premium wage is actually due as a result of any missed breaks.

2 80. Defendants also failed to compensate Ms. Rettig and all aggrieved
3 employees for every meal period they were not provided or not relieved from all
4 duties during their meal periods, during their employment or at the time their
5 termination, as applicable. Further, as alleged, by actively participating in
6 denying employees breaks, Defendants are responsible for the lack of
7 compensation to Ms. Rettig and all aggrieved employees for every meal period
8 they were not provided or not relieved from all duties during their meal periods,
9 during their employment or at the time their termination.

11 81. As a result of the aforesaid violations, Defendants are liable to pay
12 Ms. Rettig and all aggrieved employees the premium wage compensation of one
13 (1) hours' worth of pay at their regular rate of compensation for each meal break
14 not provided to them. In addition to the above, Ms. Rettig can recover an amount
15 sufficient to recover underpaid wages for the same.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to provide rest breaks and pay premium wages for missed rest**
19 **breaks in violation of Section 12 of Industrial Welfare Commission Order**

20 **No. 4-2001**

21 **(Against All Defendants)**

22
23 82. Plaintiff realleges and incorporates by reference, as though fully set
24 forth herein, each and every allegation set forth in the paragraphs.

25 83. Section 12(A) of the IWC Wage Order No. 4-2001 regulating wages,
26 hours, and working conditions in professional, technical, clerical, mechanical and
27 similar occupations provides that every employer shall authorize and permit all
28

1 employees to take rest periods, which insofar as practicable shall be in the middle
2 of each work period. The authorized rest period time shall be based on the total
3 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
4 or major fraction thereof. This means that on any given work day, a ten minute
5 rest break must be provided to an employee who has worked for three and a half
6 hours (3.5 hours), a second rest break of ten (10) minutes must be provided after
7 completing six (6) hours, a third rest break after ten (10) hours of work, the fourth
8 rest break after twelve (12) hours, and a fifth rest break after fourteen (14) hours
9 of work. Authorized rest period time shall be counted as hours worked for which
10 there shall be no deduction from wages.
11

12 84. Pursuant to Section 12(B) of IWC Wage Order No. 4-2001, if an
13 employer fails to provide an employee a rest period in accordance with the
14 applicable provisions of this order, the employer shall pay the employee one (1)
15 hour of pay at the employee's regular rate of compensation for each workday that
16 the rest period is not provided.
17

18 85. Further, California Labor Code § 226.7 states that "an employer
19 shall not require an employee to work during a meal or rest or recovery period
20 mandated pursuant to an applicable statute [...]."It further states that if an
21 employer fails to provide an employee a meal or rest or recovery period, the
22 employer shall pay the employee one additional hour of pay at the employee's
23 regular rate of compensation for each workday that the meal or rest or recovery
24 period is not provided.
25

26 86. As more fully alleged hereinabove, Ms. Rettig and all aggrieved
27 employees were not allowed to take their rest breaks at all or in a timely manner.
28 Not only did SHAWCOR PIPE PROTECTION, LLC deny or excessively delay

1 their rest breaks, but they were also forced to miss as many as two rest breaks per
2 day. Further, neither Plaintiff nor all aggrieved employees were compensated for
3 any of the rest breaks that Shawcor denied them.

4 87. As such, Defendants failed to compensate Plaintiff for every rest
5 break not provided or where Ms. Rettig was not relieved from all duties during
6 her rest breaks, during her employment or at the time of her termination. All
7 aggrieved employees similarly were denied and/or not provided timely or
8 compliant off-duty rest breaks in accordance with the law or compensated for
9 Defendant's failure to provide them.

10 88. As a result of these violations, Defendants and each of them, are
11 liable to pay Ms. Rettig and all aggrieved employees the unpaid wages payable
12 pursuant to Section 12 of IWC Wage Order No. 4-2001 and California Labor
13 Code Section 226.7 for each denied, delayed or non-compliant rest break
14 throughout her/their employment. Ms. Rettig is also entitled to an amount
15 sufficient to recover unpaid wages for the same.

16
17
18 **SEVENTH CAUSE OF ACTION**

19
20 **Failure to pay minimum/overtime wages in violation of Labor Code §§**
21 **510 and 1194 and the Industrial Welfare Commission Order No. 4-2001**
22 **(Against all Defendants)**

23 89. Plaintiff realleges and incorporates by reference, as though fully set
24 forth herein, each and every allegation set forth in the paragraphs above.

25 90. Pursuant to IWC Order No. 4-2001, Section 4, an employer is
26 required to pay each employee not less than minimum wages for all hours
27 worked. Pursuant to IWC Order No. 4-2001, Section 2(E), "Employ" means to
28

1 engage, suffer, or permit to work. Section 2(F) of the IWC Order No. 4-2001
2 states that "Employee" means any person employed by an employer. Section
3 2(K) of the IWC Order No. 4-2001 provides that "hours worked" means the time
4 during which an employee is subject to the control of an employer, and includes
5 all the time the employee is suffered or permitted to work, whether or not
6 required to do so.
7

8 91. Section 3 of IWC Order No. 4-2001 provides that employees shall
9 not be employed more than eight (8) hours in any workday or more than 40 hours
10 in any workweek unless the employee receives one and one-half (1 1/2) times
11 such employee's regular rate of pay for all hours worked over 40 hours in the
12 workweek.

13 92. Similarly, Labor Code § 510 requires an employer to compensate an
14 employee who works more than eight (8) hours in one workday, forty (40) hours
15 in a workweek, and for the first eight (8) hours worked on the seventh
16 consecutive day no less than one and one-half times the regular rate of pay for an
17 employee. Further, Labor Code § 510 obligates employers to compensate
18 employees at no less than twice the regular rate of pay when an employee works
19 more than twelve (12) hours in a day or more than eight (8) hours on the seventh
20 consecutive day of work.
21

22 93. Cal. Lab. Code Section 1194 provides that notwithstanding any
23 agreement to work for a lesser wage, any employee receiving less than the legal
24 minimum wage or the legal overtime compensation applicable to the employee is
25 entitled to recover in a civil action the unpaid balance of the full amount of this
26 minimum wage or overtime compensation, including interest thereon,
27 reasonable attorney's fees, and costs of suit.
28

1 94. In accordance with Labor Code § 1194, Ms. Rettig and all aggrieved
2 employees could not then agree and cannot now agree to work for a lesser wage
3 than the amount proscribed by IWC Wage Order 4-2001 and Labor Code §§ 510
4 and 1194.
5

6 95. As alleged above, Plaintiff and all aggrieved employees were denied
7 compensation for all hours worked including overtime pay as well as work during
8 afterhours and on weekends, in violation of Cal. Labor Code §1194 and 510.
9 Specifically, Plaintiff was pressured by Defendants' accountant to not report
10 overtime wages, even though she had worked overtime on the day. Ms. Rettig
11 and all aggrieved employees worked at least 8 (eight) hours per day, and often
12 had shifts extended beyond that period without proper pay. Ms. Rettig and all
13 aggrieved worked approximately 42-50 hours per week, and sometimes on
14 weekends too. However, Defendants disapproved Ms. Rettig and all aggrieved
15 employees reporting overtime hours, even though Respondent required them to
16 work long hours to complete their work duties and responsibilities. Thus, Ms.
17 Rettig and all aggrieved employees were not paid overtime wages for all the
18 additional hours they worked.
19
20

21 96. As a result of the aforesaid violations, Defendants, and each of
22 them, are liable to pay all unpaid wages to payable to them. Cal. Labor Code §
23 1194.2 authorizes employees to recover wages to recover liquidated damages for
24 violations of Labor Code § 1194. Where an employee, as Plaintiff and all
25 Aggrieved Employees are not paid for all hours worked under Labor Code §
26 1194, the employee may recover minimum wages for the time associated with
27 the overtime for which they received no compensation. (See *Sillah v. Command*
28

1 *Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees
2 suing for failure to pay overtime could recover liquidated damages under §
3 1194.2 if they also showed they were paid less than minimum wage]; *accord*
4 *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC,
5 2016 U.S. Dist. LEXIS 172319, at *20-2 I.)
6

7
8 **EIGHTH CAUSE OF ACTION**

9 **Failure to pay wages due and payable in violation of Cal. Labor Code §§**
10 **201 and 203**

11 **(Against All Defendants)**
12

13 97. Plaintiff realleges and incorporates by reference, as though fully set
14 forth herein, each and every allegation set forth in the paragraphs above.

15 98. Pursuant to Cal. Labor Code § 201(a), if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and
17 payable immediately. Further, Cal. Labor Code § 203(a) provides that if an
18 employer willfully fails to pay, without abatement or reduction, any wages of an
19 employee who is discharged, the wages of the employee shall continue as a
20 penalty from the due date thereof at the same rate until paid or until an action
21 therefore is commenced; but the wages shall not continue for more than 30 days.
22

23 99. The Supreme Court of California in *McLean v. State of California*
24 2016) 1 Cal. 5th 615, 619 held as follows: "An 'employer' that 'willfully fails to
25 pay' in accordance with sections 201 and 202 'any wages of an employee who is
26 discharged or who quits' is subject to so-called waiting-time penalties of up to 30
27 days' wages."
28

1 100. As alleged hereinabove, when Defendants terminated Ms. Rettig
2 employment, all unpaid wages with respect to her unpaid work during meal and
3 rest breaks, unpaid work afterhours and on weekends, as well as unpaid overtime
4 became due and payable immediately. Ms. Rettig was not paid the wages due to
5 her for unpaid work during meal and rest breaks, unpaid work afterhours and on
6 the weekend that Shawcor Pipe Protection, LLC denied her at the time of her
7 termination. These wages remain due and unpaid to date. On information and
8 belief, all aggrieved employees were similarly not paid all unpaid wages including
9 but not limited wages for unpaid work during meal and rest breaks, afterhours, or
10 the weekend due and payable to all aggrieved employees at the time of their
11 discharge or resignation, As alleged above, Shawcor Pipe Protection, LLC as the
12 employer as defined by Cal. Labor Code Section 2810.3 is liable for payment of
13 wages.
14

15
16 101. As a result of the aforesaid, Defendants, and each of them, failed to
17 comply with the provisions of Cal. Labor Code § 201.

18 102. Pursuant to Cal. Labor Code § 203(a), Ms. Rettig is entitled to a
19 statutory penalty of 30 days' pay for Shawcor Pipe Protection, LLC'S role in the
20 failure to pay her all earned, unpaid wages in violation of Cal. Labor Code § 201
21 and attorney's fees and costs under Cal. Lab. Code § 218.5.
22
23

24 **NINTH CAUSE OF ACTION**

25 **Failure to pay wages in a timely manner in violation Cal. Labor Code**

26 **§§204 and 204 (b)**

27 **(Against all Defendants)**
28

1 103. Plaintiff realleges and incorporates by reference, as though fully set
2 forth herein, each and every allegation set forth in the paragraphs above.

3 104. Labor Code § 204 expressly requires that “[a]ll wages...earned by
4 any person in any employment are due and payable twice during each calendar
5 month, on days designated in advance by the employer as the regular paydays.”
6 Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by
7 the payment of wages for weekly, biweekly or semimonthly payroll if the wages
8 are paid not more than seven calendar days following the close of the payroll
9 period. California Labor Code § 204(b) provides that labor performed by a
10 weekly-paid employee during any calendar week and prior to or on the regular
11 payday shall be paid for not later than the regular payday of the employer for such
12 weekly-paid employee falling during the following calendar week. It further
13 provides that labor performed by a weekly-paid employee during any calendar
14 week and subsequent to the regular payday shall be paid for not later than seven
15 days after the regular payday of the employer for such weekly-paid employee
16 falling during the following calendar week.

17 105. Ms. Rettig received paychecks for work performed at Shawcor Pipe
18 Protection, LLC on a bi-monthly basis. However, she was not paid overtime for
19 all hours worked in excess of eight hours, wages payable for work performed
20 during any and each meal and rest period, and the premium wage earned and
21 payable to her on each payday for any and each meal and rest period that Ms.
22 Rettig was denied, delayed or was not compliant. Similarly, on information and
23 belief, all aggrieved employees received paychecks for work performed on a
24 weekly or bimonthly basis, but were not paid the premium wage earned, overtime
25 for all hours worked in excess of eight hours and wages payable to them for work
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1 performed during any and each meal and rest period. As alleged above, Shawcor
2 Pipe Protection, LLC as the employer as defined by Cal. Labor Code Section
3 2810.3, is liable for payment of wages.

4 106. Thus, as a result of the aforesaid acts and omissions, Defendants,
5 and each of them, failed to comply with the provisions of Cal. Labor Code §§ 204
6 and 204b.
7

8 107. Pursuant to Cal. Labor Code Section 210, in addition to, and
9 entirely independent and apart from, any other penalty provided in this article,
10 every person who fails to pay the wages of each employee as provided in, inter
11 alia, Sections 204 and 204b shall be subject to a civil penalty of one hundred
12 dollars (\$100) for each failure to pay each employee for any initial violation and
13 two hundred dollars (\$200) for each failure to pay each employee, plus 25
14 percent of the amount unlawfully withheld for each subsequent violation, or any
15 willful or intentional violation. Therefore, Defendants, and each of them, are
16 liable to pay civil penalties pursuant to Cal. Labor Code 210 for each initial and
17 subsequent violation of Cal. Labor Code Section 204 and 204b.
18

19
20 **TENTH CAUSE OF ACTION**

21 **Failure to reimburse expenses incurred in violation of Cal. Labor Code §**

22 **2802**

23 **(Against all Defendants)**
24

25 108. Plaintiff realleges and incorporates by reference, as though fully set
26 forth herein, each and every allegation set forth in the paragraphs above.

27 109. Pursuant to Cal. Labor Code §2802(a), an employer is obliged to
28 "indemnify his or her employee for all necessary expenditures or losses incurred

1 by the employee in direct consequence of the discharge of his or her duties, or of
2 his or her obedience to the directions of the employer, even though unlawful,[..].”

3 110. Further, California Labor Code Section 2802 requires employers to
4 always reimburse employees who are required to use personal cell phones for
5 work-related calls for a reasonable percentage of their cell phone bills. *Cochran v.*
6 *Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137, 1140.* To show
7 liability under section 2802, an employee need only show that he or she was
8 required to use a personal cell phone to make work-related calls, and he or she
9 was not reimbursed. *Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th*
10 *1137, 1145 (2014).*

12 111. All alleged above, Ms. Rettig and all aggrieved employees were
13 regularly and persistently required by Defendants to use their personal vehicles
14 to run company errands without reimbursement. Similarly, Plaintiff and all
15 aggrieved employees were required to use their personal cell phones for
16 Defendant business without being reimbursed. These unpaid expenses were
17 incurred and borne by Plaintiff and all aggrieved employees in direct
18 consequence of discharge of their duties and in the course of their employment.

20 112. As a result of the aforesaid act and omissions, Defendants and each
21 of them violated Cal. Labor Code 2802 when they failed to reimburse Plaintiff
22 and all aggrieved employees for the use of their personal vehicle, personal
23 cellphone, or fuel costs borne by them out-of-pocket on work related matters. To
24 date, these reasonable and necessary expenses incurred by and owed to them by
25 Respondents remain unpaid.

27 113. Cal. Labor Code Section 2802(c) provides that “for purposes of this
28 section, the term “necessary expenditures or losses” shall include all reasonable

1 costs, including, but not limited to, attorney's fees incurred by the employee
2 enforcing the rights granted by this section." Cal. Labor Code Section 2802(b)
3 further provides that all awards made by a court for "reimbursement of necessary
4 expenditures under this section shall carry interest at the same rate as judgments
5 in civil actions. Interest shall accrue from the date on which the employee
6 incurred the necessary expenditure or loss."

8 114. As a result, Defendants, and each of them, are liable to reimburse
9 and Plaintiff is entitled to an award of all reasonable costs and expenses incurred
10 by Plaintiff, interest accrued, as well as attorney's fees incurred for enforcing the
11 rights under Cal. Labor Code Section 2802.

12
13
14 **ELEVENTH CAUSE OF ACTION**

15 **Failure to provide complete and accurate wage statements in violation of**
16 **Cal. Labor Code § 226(a)**

17 **(Against All Defendants)**

18 115. Plaintiff realleges and incorporates by reference, as though fully set
19 forth herein, each and every allegation set forth in the paragraphs above.

21 116. Cal. Labor Code § 226 obligates employers, semi-monthly or at the
22 time of each payment to furnish an itemized wage statement in writing showing:

- 23 (1) gross wages earned;
24 (2) total hours worked by the employee;
25 (3) the number of piece-rate units earned and any applicable piece rate if
26 the employee is paid on a piece rate;
27 (4) all deductions, provided that all deductions made on written orders of
28 the employee may be aggregated and shown as one item;

- 1 (5) net wages earned;
2 (6) the inclusive dates of the period for which the employee is paid;
3 (7) the name of the employee and only the last four digits of his or her
4 social security number or an employee identification number other than a
5 social security number;
6 (8) the name and address of the legal entity that is the employer...;
7 (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the
9 employee...[.]

10 117. As a result of Defendants' failure to pay Ms. Rettig and all aggrieved
11 employees' wages earned for all overtime and afterhours work, working through
12 rest and meal breaks as well as rest and meal period premiums for their missed
13 breaks, and failure to reimburse work related expenses incurred by them, the
14 wage statements issued by Defendants do not indicate the correct amount of
15 gross wages earned, total hours worked, and net wages earned. Therefore,
16 Shawcor Pipe Protection, LLC failed to provide accurate itemized wage
17 statements setting forth the information required by Labor Code § 226(a)(1, 2, 5,
18 and 9). Failing to include rest period premiums on an employee's wage statement
19 violates Labor Code § 226(a). *See e.g. Fields v. West Marine Prods.* (N.D. Cal. Feb.
20 7, 2014) 2014 U.S. Dist. LEXIS 16638.

22 118. Cal. Labor Code Section 226(e)(1) provides that an employee
23 suffering injury as a result of a knowing and intentional failure by an employer to
24 comply with subdivision (a) is entitled to recover the greater of all actual damages
25 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
26 hundred dollars (\$100) per employee for each violation in a subsequent pay
27
28

1 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
2 is entitled to an award of costs and reasonable attorney's fees.

3 119. Cal. Labor Code Section 226(e)(2)(B) further provides that an
4 employee is deemed to suffer injury for purposes of this subdivision if the
5 employer fails to provide accurate and complete information as required by any
6 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee
7 cannot promptly and easily determine from the wage statement alone the
8 amount of the gross wages or net wages paid to the employee during the pay
9 period or any of the other information required to be provided on the itemized
10 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
11 (a).
12

13 120. As a result of Defendants' knowing and intentional failure to pay
14 Ms. Rettig wages earned for all overtime and afterhours work, working through
15 rest and meal breaks as well as rest and meal period premiums for her missed
16 breaks, and failure to reimburse work related expenses incurred by her, she was
17 not given inaccurate information on her timecards, or accurate itemized wage
18 statements. On information and belief, and based thereon, Defendants failed to
19 pay all aggrieved employees' wages earned for all overtime and afterhours work,
20 working through rest and meal breaks as well as rest and meal period premiums
21 for their missed breaks, and failure to reimburse work related expenses incurred
22 by them which resulted them not being given inaccurate information on her
23 timecards, or accurate itemized wage statements.
24
25

26 121. As a result of Defendants' violations and each of them, Ms. Rettig is
27 entitled to recover damages, penalties, and an award of costs and reasonable
28

1 attorney's fees from Defendants pursuant to Cal. Labor Code Sections 226(e)(1)
2 and 226(e)(2)(B).

3 122. In addition to the above, Cal. Labor Code § 226.3 provides that
4 "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
5 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
6 violation in an initial violation and one thousand dollars (\$1,000) per employee
7 for each violation in a subsequent citation, for which the employer fails to provide
8 the employee a wage deduction statement or fails to keep the required in
9 subdivision (a) of Section 226." The civil penalties provided for in this section are
10 in addition to any other penalty provided by law.

11
12 123. As such, Defendants, and each of them, are liable to pay the civil
13 penalties provided above for their failure to provide accurate itemized wage
14 statements.
15

16 **TWELFTH CAUSE OF ACTION**

17 **Retaliation in Violation of Cal. Labor Code § 98.6**

18 **(Against All Defendants)**

19
20 124. Plaintiff realleges and incorporates by reference, as though fully set
21 forth herein, each and every allegation set forth in the paragraphs above.

22 125. Pursuant to California Labor Code Section 98.6 (a), it is unlawful for
23 an employer or any person acting "in any manner" to retaliate or take any
24 adverse action against an employee or applicant for employment because the
25 employee made a written or oral complaint or because the employee has
26 exercised any rights afforded her under the Labor Code either for herself or "on
27 behalf of himself, herself, or others" Under California Labor Code § 98.6 (e),
28

1 an employer is prohibited from retaliating against an employee because the
2 employee is a family member of a person who has, or is perceived to have,
3 engaged in any whistleblowing conduct.

4 126. As more fully alleged hereinabove, Ms. Rettig had engaged in
5 reporting activities after she discovered potential illegalities based on a good
6 faith belief that one of their long term employees was committing fraudulent
7 financial transactions as well non-compliant and unsafe working conditions at
8 her workplace. Within a month of her reporting activities, Plaintiff's employment
9 was terminated by Defendants on a pretext solely because of these actions. Thus,
10 Ms. Rettig's termination is retaliatory and in violation of Cal. Labor Code §98.6
11 because it is directly connected to and a consequence of her reporting actions.
12

13 127. Under *Flait v. North American Watch Corp.*,² to establish a prima
14 facie case, the plaintiff must show that he engaged in a protected activity, his
15 employer subjected him to adverse employment action, and there is a causal link
16 between the protected activity and the employer's action. Ms. Rettig's complaints
17 to various personnel at Shawcor had continued until shortly before her
18 termination, such that Shawcor is liable for retaliation on grounds that the causal
19 nexus between the protected activity and the adverse action is met.
20

21 128. By these aforesaid actions, Defendants and each of them, violated
22 the provision of Cal. Labor Code Section 98.6 (e).
23

24 129. As a result of the aforesaid violations, pursuant to Cal. Labor Code §
25 98.6(b)(1), Plaintiff is entitled to reinstatement and reimbursement for lost
26 wages and work benefits caused by the acts of the Defendant. Further, pursuant
27

28 ² *Flait v. North American Watch Corp.*, 3 Cal.App.4th 467, 476-79

1 to Cal. Labor Code § 98.6(b)(3), Defendants, and each of them, Plaintiff is
2 entitled to a civil penalty of \$10,000 for each violation.

3
4 **THIRTEENTH CAUSE OF ACTION**

5 **Retaliation in Violation of Cal. Labor Code § 1102.5**

6 **(Against all Defendants)**

7 130. Plaintiff realleges and incorporates by reference, as though fully set
8 forth herein, each and every allegation set forth in the paragraphs above.

9
10 131. Pursuant to California Labor Code section 1102.5(b), an employer
11 or any person acting on behalf of the employer “shall not retaliate” against an
12 employee for disclosing information or because the employer believes that the
13 employee disclosed or may disclose information, “to a government or law
14 enforcement agency, or to a person with authority over the employee . . . who has
15 the authority to investigate, discover, or correct the violation or noncompliance”
16 that the employee “has reasonable cause to believe that the information discloses
17 a violation of state or federal statute, or a violation of or noncompliance with a
18 local, state, or federal rule or regulation, regardless of whether disclosing the
19 information is part of the employee's job duties.”

20
21 132. Under Cal. Labor Code § 1102.5(h), an employer “shall not
22 retaliate” against an employee because “the employee is a family member of a
23 person who has, or is perceived to have, engaged in any acts protected by this
24 section.”

25 133. As alleged hereinabove, Defendants terminated Plaintiff's
26 employment because she engaged in protected reporting activities while she was
27 employed with them. Plaintiff's termination was wrongful and retaliatory
28

1 because Defendants' decision to terminate her employment was solely
2 connected to her reporting activities. Further, Plaintiff was a hardworking and
3 high performing worker. Defendants' decision to terminate her employment on
4 the pretext of a "lay-off" due to a "downturn in work projects" was wholly
5 unrelated to her performance.
6

7 134. As a result of the aforesaid, Defendants, and each of them, violated
8 the provisions of Cal. Labor Code §1102.5.

9 135. By aforesaid acts and omissions of Defendants, and each of them,
10 Plaintiff has been directly and legally caused to suffer actual damages including,
11 but not limited to, medical expenses and special damages, loss of earnings and
12 future earning capacity, and other pecuniary loss not presently ascertained.

13 136. As a further direct and legal result of the acts and conduct of
14 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
15 suffer and continues to suffer emotional and mental distress, trauma, anguish,
16 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
17 exact nature, duration, and extent of said injuries is presently unknown to
18 Plaintiff, but she is informed and believes and thereon alleges that some if not all
19 of the injuries are reasonably certain to be permanent in character.
20

21 137. As a result of the aforesaid violations, under section 1102.5(b), an
22 employee can recover all actual damages flowing from the retaliation and
23 retaliatory discharge, including compensatory damages, lost wages, lost benefits,
24 and emotional distress.³
25
26
27

28 ³ Labor Code § 1105; *Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 241.

138. In addition to the above, because Shawcor Pipe Protection, LLC is a limited liability company, Plaintiff can recover a \$10,000 penalty per violation pursuant to Cal. Labor Code § 1102.5(f). The aforesaid section expressly states that a penalty can be recovered for “each violation” of the section.

FOURTEENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy
(Against All Defendants)

139. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in the paragraphs above.

140. The general rule in California is that in the absence of an express or implied employment contract to the contrary, the employment relationship is presumed to be terminable by either party “at will.” One exception to the at-will employment doctrine is that employers have no right to terminate an employee for a reason that contravenes fundamental public policy. “This exception is enforced through tort law by permitting the discharged employee to assert against the employer a cause of action for wrongful discharge in violation of fundamental public policy.” Tort claims for wrongful discharge typically arise when an employer retaliates against an employee for “(1) refusing to violate a statute ... [,] (2) performing a statutory obligation ... [,] (3) exercising a statutory right or privilege ... [, or] (4) reporting an alleged violation of a statute of public importance.” Firing someone based on sex, race, age, or disability sufficiently implicates public policy. Moreover, retaliation in violation of section 98.6 and 1102.5 of the Labor Code for whistleblower type activity can also support this tort if the conduct complained of could damage the public.

1 141. On or about November 1, 2019, Shawcor Pipe Protection, LLC
2 terminated Ms. Rettig's employment because of her protected reporting activities
3 she had engaged in a month before. This is clear and direct retaliation. Any other
4 reason that has been or might be offered is pretextual because Ms. Rettig's record
5 at Shawcor Pipe Protection, LLC was spotless throughout her employment,
6 except for the retaliatory complaint made against her by Ms. Chicki who Ms.
7 Rettig had questioned after discovering that she was using Shawcor's corporate
8 card for personal transactions. Thus, Defendant's actions were in direct
9 contravention of the public policies of the State of California and the United
10 States. Ms. Rettig has a strong case and is confident that she will be able to
11 convince a jury that she was wrongfully terminated in retaliation for her
12 protected reporting activities, all in violation of public policy.
13

14 142. By reason of the aforementioned conduct and circumstances,
15 Defendants, and each of them, were in direct contravention of the public policies
16 of the State of California and the United States that seek to protect employees
17 from actions in reporting and advocating corrective action of statutory violations.
18 As a further result of the aforesaid conduct of Defendants, and each of them,
19 Plaintiff has been deprived of her right to a safe and stress-free work
20 environment free from retaliation for engaging in protected reporting activities
21 and has been wrongfully terminated, all in violation of public policy.
22

23 143. By the aforesaid acts and omissions of Defendants, and each of
24 them, Plaintiff has been directly and legally caused to suffer actual damages
25 including, but not limited to, medical expenses and special damages, loss of
26 earnings and future earning capacity, and other pecuniary loss not presently
27 ascertained.
28

1 144. As a further direct and legal result of the acts and conduct of
2 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
3 suffer and continues to suffer severe emotional and mental distress, anguish,
4 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
5 exact nature, duration, and extent of said injuries is presently unknown to
6 Plaintiff, but she is informed and believes and thereon alleges that some if not all
7 of the injuries are reasonably certain to be permanent in character.
8

9 145. Plaintiff is informed and believes and thereon alleges that
10 Defendants and their managers, officers, and/or directors committed the acts
11 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
12 intention of injuring Plaintiff and acted with an improper and evil motive
13 amounting to malice or oppression, and in conscious disregard of Plaintiff's
14 rights. Moreover, Defendants and their managers, officers, and/or directors
15 authorized or ratified the wrongful conduct of their employees and/or are
16 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
17 recover punitive damages from Defendants in an amount according to proof. Cal.
18 Civ. Code § 3294.
19

20 146. By engaging in violations of well settled public policies codified in
21 California statutes, Defendants sought to chill the freedom of speech without
22 retribution, for the purpose of avoiding liability to Defendants' sole benefit. As
23 such, Plaintiff's claims seek to vindicate the important public rights of free
24 speech and equal protection of the laws which confer a significant benefit on
25 California taxpayers and all American citizens. The financial benefit to Plaintiff
26 is far less than to the public at large since Plaintiff's damages are limited by
27
28

1 statute. Based thereon, Plaintiff is entitled to reasonable attorney's fees pursuant
2 to Code Civ. Proc. §1021.5.

3
4 **FIFTEENTH CAUSE OF ACTION**

5 **Negligent Hiring, Supervision and Retention of an Employee**

6 **(Against All Defendants)**

7
8 147. Plaintiff realleges and incorporates by reference, as though fully
9 set forth herein, each and every allegation set forth above.

10 148. Unlike California's respondeat superior law, which makes an
11 employer *vicariously* liable for an employee's wrongful acts, California's
12 negligent hiring, supervision or retention law makes an employer *directly* liable
13 for its own failure to protect others. The elements for negligent supervision of an
14 employee are: (1) the employee was unfit or incompetent to perform the work
15 for which he was hired; (2) the defendant knew or should have known that the
16 employee was unfit or incompetent and that it created a particular risk to others;
17 (3) the employee's unfitness or incompetence harmed the plaintiff; and (4) the
18 defendant's negligence in supervising the employee was a substantial factor in
19 causing the plaintiff's harm. Thus, when inappropriate behavior is reported,
20 such as complaints that an employee is inappropriately touching other
21 employees, or complaints of discrimination and harassment, and the employer
22 negligently retains the employee despite knowing he was engaging in unlawful
23 behavior, amounts to negligent supervision. The fact that the employee is
24 engaging in illegal behavior with other employees makes them unfit for their
25 job.
26
27
28

1 149. As alleged herein, Defendants had knowledge that Plaintiff's
2 supervisor, Ms. Chicki, a highly favored long term employee of 25 years, had
3 demonstrated a pattern of harassing and getting "rid of" female employees
4 because she did not like working with them. Further, Ms. Rettig discovered that
5 Ms. Chicki had been using Defendant's corporate card for personal purchases
6 and had questioned her about it. Ms. Rettig was very new to the company and
7 was considering reporting her to Defendants based on her good faith belief that
8 Ms. Chicki was stealing from the company and that she had made potentially
9 fraudulent transactions. However, before Ms. Rettig could do that, Ms. Chicki
10 filed a retaliatory complaint against her in the fear that Ms. Rettig might report
11 her first. On or about October 1, 2019, Ms. Rettig reported that she believed
12 Ms. Chicki was stealing from the company and she was engaging in harassment,
13 retaliation, and discrimination against Ms. Rettig because of her discovery. In
14 addition to the above, Plaintiff reported to Defendant's plant manager, Ms.
15 McGarry the stress, anxiety and unsafe driving conditions that the faulty safety
16 alarm of the company truck were causing her multiple times and persistently
17 followed up regarding her complaints. Ms. McGarry continued to be dismissive
18 and ignored her complaints due to her discriminatory and prejudiced view of
19 Ms. Rettig as a female driver. Yet, Shawcor failed to monitor either Ms. Chicki
20 or Ms. McGarry's treatment of Ms. Rettig. Even after Plaintiff reported the Ms.
21 Chicki, on information and belief, Shawcor conducted no substantial internal
22 investigation on any of Ms. Rettig's complaints. On further information and
23 belief, both Ms. McGarry and Ms. Chicki are still employed by Shawcor, and to
24 date, no disciplinary action has been taken against either of them. Further, Ms.
25 Rettig reported the harassing conduct and the distress she was facing at the
26
27
28

1 workplace several times. Shawcor knew or should have known that their
2 employees had the propensity to mistreat their colleagues and subordinates in
3 contravention to the law. On information and belief, Defendants had
4 terminated the employment of at least two female employees that Ms. Chicki
5 was harassing. Therefore, Defendants were negligent in their hiring, retention,
6 and supervision of Ms. Chicki, Ms. McGarry, as well as other employees, and are
7 liable as a result.
8

9 150. By the aforesaid acts and omissions of Defendants, and each of
10 them, Plaintiff has been directly and legally caused to suffer actual damages
11 including, but not limited to, loss of earnings and future earning capacity, costs
12 of suit, and other pecuniary loss not presently ascertained.
13

14 151. As a further direct and legal result of the acts and conduct of
15 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
16 suffer and continues to suffer severe emotional and mental distress, anguish,
17 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
18 exact nature, duration, and extent of said injuries is presently unknown to
19 Plaintiff, who will seek leave of Court to determine the same when they are
20 ascertained.
21

22 152. Plaintiff is informed and believes and thereon alleges that
23 Defendants and their managers, officers, and/or directors committed the acts
24 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
25 intention of injuring Plaintiff and acted with an improper and evil motive
26 amounting to malice or oppression, and in conscious disregard of Plaintiff's
27 rights. Moreover, Defendants and their managers, officers, and/or directors
28 authorized or ratified the wrongful conduct of their employees and/or are

1 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to
2 recover punitive damages from defendants in an amount according to proof.
3 Cal. Civ. Code § 3294.
4

5 **SIXTEENTH CAUSE OF ACTION**

6 **Unfair Business Practices in Violation of Cal. Business & Prof. Code §§**
7 **17200, et seq.**
8 **(Against All Defendants)**

9 153. Plaintiff realleges and incorporates by reference, as though fully set
10 forth herein, each and every allegation set forth in the paragraphs above.
11

12 154. Cal. Bus. & Prof. Code § 17200 provides: "As used in this chapter,
13 unfair competition shall mean and include any unlawful, unfair or fraudulent
14 business act or practice and unfair, deceptive, untrue or misleading advertising
15 [or] act[.]" An action under § 17200 for injunctive relief and disgorgement of ill-
16 gotten gains may be brought "by any person acting for the interests of itself, its
17 members or the general public," even if the person has not been personally
18 harmed by the prohibited conduct. *See also Herr v. Nestle U.S.A., Inc.*, 03 C.D.O.S.
19 50432 (June 12, 2003).
20

21 155. Defendants, and each of them, are "persons" as defined under
22 Business and Professions Code § 17021.35. Each of the directors, officers
23 and/or agents of Shawcor Pipe Protection, LLC and DOES 1-100; are equally
24 responsible for the acts of the others as set forth in Business and Professions
25 Code §17095.

26 156. Defendants own, operate, and provide integrated energy services
27 for various industries including oil and natural gas, petrochemical, electrical, etc.
28

1 and are therefore a covered entity as defined in Business and Professions Code
2 §§ 17021 and 17024.

3 157. Defendants' violations of the Labor Code and other laws and
4 regulations including retaliation and Plaintiff's termination for reporting the
5 fraudulent financial transactions by an employee using Defendant's money, who
6 opposed their unlawful practices and unsafe working conditions as well as their
7 multiple violations of the California Labor Code, constitute unfair business
8 practices in violation of the Unfair Competition Law, Business & Professions
9 Code § 17200, *et seq.*

10
11 158. Shareholders, owners, directors, officers, managing agents and/or
12 sole proprietors misappropriated and converted to themselves for their individual
13 advantage the wages and other monies owed to Plaintiff as alleged throughout
14 the complaint.

15
16 159. Under Unfair Competition Law, employer's failure to pay earned
17 wages was an unlawful business practice. [*Cortez v. Purolator Air Filtration*
18 *Products Co.* (2000) 23 Cal.4th 163] A UCL claim may be predicated on a
19 practice of not paying premium wages for missed, shortened, or delayed meal
20 breaks attributable to the employer's instructions or undue pressure, and
21 unaccompanied by a suitable employee waiver or agreement. [*Safeway Inc. v.*
22 *Superior Court* 238 Cal. App. 4th 1138 (2015)] Defendant's violations of the
23 Labor Code, including the denial of rest and meal breaks, failure to pay the
24 premium wage as a result of the missed meal and rest breaks, and Mr. Serrano's
25 retaliatory termination solely based on his family member's actions of opposing
26 unlawful business practices involving multiple violations of the California Labor
27
28

1 Code constitute unfair business practices in violation of the Unfair Competition
2 Law, Business & Professions Code § 17200, *et seq.*

3 160. As a result of Defendant's unfair business practices, Defendants
4 have reaped unfair benefits and illegal profits at the expense of Plaintiff, and
5 ultimately to members of the public. Defendant's utilization of such unfair
6 business practices constitutes unfair competition and provides an unfair
7 advantage over Defendant's competitors.
8

9 161. For the aforesaid acts and omissions of Defendants, and each of
10 them, Plaintiff is entitled to seek preliminary and permanent injunctive relief,
11 including but not limited to, orders that the Defendants account for, disgorge and
12 restore to Plaintiff the compensation unlawfully withheld and for which they
13 were unjustly enriched.
14

15 162. Pursuant to Business and Professions Code § 17203, Plaintiff will
16 seek restitution and/or disgorgement of all monies wrongfully retained by
17 Defendants in violation of Business and Professions Code § 17000 *et seq.* and
18 17200 *et seq.*

19 163. By engaging in violations of well settled public policies codified in
20 California statutes, Defendants sought to chill the freedom of speech without
21 retribution, for the purpose of avoiding liability to Defendants' sole benefit. As
22 such, Plaintiff's claims seek to vindicate the important public rights of free
23 speech and equal protection of the laws which confer a significant benefit on
24 California taxpayers and all American citizens. The financial benefit to Plaintiff
25 is far less than to the public at large since Plaintiff's damages are limited by
26 statute. Based thereon, Plaintiff is entitled to reasonable attorney's fees pursuant
27 to C.C.P. §1021.5.
28

1 **SEVENTEENTH CAUSE OF ACTION**

2 **Penalties pursuant to Labor Code Private Attorney General Act of 2004**

3 **("PAGA")(Labor Code §§2698-2699.5)**

4 **(Against All Defendants)**

5 164. Plaintiff realleges and incorporates by reference, as though fully set
6 forth herein, each and every allegation set forth in the paragraphs above.

7 165. As set forth in detail under "Factual Allegations," Defendant
8 violated California Labor Code §§ 98.6, 201, 203, 204, 204b, 210, 226, 226.7,
9 510, 512, 1102.5, 1194, 2802, and IWC Wage Order No. 4-2001 Section 11 -
10 12.

11 166. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such
12 violation, Plaintiff and all other aggrieved employees are entitled to penalties in
13 an amount to be shown at the time of trial subject to the following formula:

14 \$100 for the initial violation per employee per pay period; and

15 \$200 for each subsequent violation per employee per pay period.

16 These penalties will be allocated 75% to the Labor Workforce
17 Development Agency and 25% to the affected employees. These penalties may
18 be stacked separately for each of Defendants violations of the California Labor
19 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
20 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding
21 that although the plaintiff did not seek stacked PAGA penalties, that "PAGA
22 penalties can be 'stacked,' i.e., multiple PAGA penalties can be assessed for the
23 same pay period for different Labor Code violations.").

24 167. As a result, Plaintiff, as an Aggrieved Employee, may seek, in
25 addition to any civil penalty allowable under the law, an amount sufficient to
26

1 recover unpaid wages for nonproductive times, including overtime wages, meal
2 period premiums and rest period premiums, in violation of Labor Code sections
3 201, 204, 204b, 226.7, 510, 512, and 1194, and IWC Wage Order No. 4-2001.

4 168. As more fully alleged hereinabove, Defendants, and each of them,
5 failed to provide Plaintiff and all aggrieved employees meal breaks that are
6 timely and compliant are liable to pay civil penalties pursuant to Section 20 of
7 IWC Wage Order No. 4-2001. Plaintiff, as an aggrieved employee, is entitled to
8 recover civil penalties of fifty dollars (\$50) for the initial violation and one
9 hundred dollars (\$100) for each subsequent violation for each pay period on
10 behalf of herself and all aggrieved employees who were not paid meal period
11 premium wage for all meal periods that Defendants failed to provide or denied.
12

13 169. Defendants, and each of them, are liable to pay civil penalties
14 pursuant to Section 20 of IWC Wage Order No. 4-2001 for their violations of
15 Section 12 of IWC Wage Order No. 4-2001. Plaintiff is entitled to recover civil
16 penalties of fifty dollars (\$50) for the initial violation and one hundred dollars
17 (\$100) for each subsequent violation for each pay period on behalf of herself and
18 all aggrieved employees who were not paid rest period premium wage for each
19 rest break denied and delayed throughout their employment.
20

21 170. As more fully alleged hereinabove, Defendants failed to pay Plaintiff
22 and all aggrieved employees minimum wages and overtime wages and wages for
23 work performed afterhours or on the weekend, thus, violating the minimum
24 wages and overtime pay provisions of Labor Code sections 510 and 1194, and
25 Sections 3 and 4 of the IWC Wage Order 4-2001. As a result of the aforesaid
26 violations pursuant to IWC Wage Order No. 4-2001, Section 20, Defendant is
27 subject to a civil penalty of \$50 for initial violation and \$100 for any subsequent
28

1 violations for each underpaid employee for each pay period in addition to the
2 amount which is sufficient to recover unpaid wages; and liable to fine of not less
3 than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or
4 by both, for their failure to pay complainant and all aggrieved employees a wage
5 less than the minimum fixed by an order of the commission and violation of IWC
6 Wage Order 4-2001.

7
8 171. Further, Labor Code § 558 imposes a penalty upon employers who
9 violates, or causes to be violated ... any provision regulating hours and days of
10 work in any order of the Industrial Welfare Commission shall be subject to a civil
11 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid;
13 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
14 employee for each pay period for which the employee was underpaid. Plaintiff
15 and all Aggrieved Employees are entitled to recover penalties under Labor Code
16 § 558. *See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal. App. 4th
17 1112.

18
19 172. Cal Labor code 1197.1(a) provides that any employer or other
20 person acting either individually or as an officer, agent, or employee of another
21 person, who pays or causes to be paid to any employee a wage less than the
22 minimum fixed by an applicable state or local law, or by an order of the
23 commission, shall be subject to a civil penalty, restitution of wages, liquidated
24 damages payable to the employee, and any applicable penalties imposed
25 pursuant to Section 203 as follows:
26

27 (1) For any initial violation that is intentionally committed, one hundred
28 dollars (\$100) for each underpaid employee for each pay period for which

1 the employee is underpaid. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to
3 Section 1194.2, and any applicable penalties imposed pursuant to Section
4 203.

5 (2) For each subsequent violation for the same specific offense, two hundred
6 fifty dollars (\$250) for each underpaid employee for each pay period for
7 which the employee is underpaid regardless of whether the initial violation is
8 intentionally committed. This amount shall be in addition to an amount
9 sufficient to recover underpaid wages, liquidated damages pursuant to
10 Section 1194.2, and any applicable penalties imposed pursuant to Section
11 203.
12

13 (3) Wages, liquidated damages, and any applicable penalties imposed
14 pursuant to Section 203, recovered pursuant to this section shall be paid to
15 the affected employee.
16

17 173. As such, Plaintiff will also seek to recover penalties and damages set
18 forth in to Cal. Labor Code 1197.1 above from Defendants for their failure to pay
19 minimum wages to their employees on behalf of herself and all aggrieved
20 employees.

21 174. In addition, as set forth above, Defendants failed to provide Plaintiff
22 and all aggrieved employees with accurate itemized wage statements in
23 compliance with Labor Code § 226(a). Labor Code § 226.3 provides that "[a]ny
24 employer who violates subdivision (a) of Section 226 shall be subject to a civil
25 penalty in the amount of two hundred fifty dollars (\$250) per employee per
26 violation in an initial violation and one thousand dollars (\$1,000) per employee
27 for each violation in a subsequent citation, for which the employer fails to provide
28

1 the employee a wage deduction statement or fails to keep the required in
2 subdivision (a) of Section 226.”

3 175. Further, Plaintiff, as an Aggrieved Employee, need not
4 demonstrate or prove that Defendants conduct in refusing to provide
5 accurate and itemized wage statements was knowing, intentional, or willful.
6 *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788, (2017),
7 (“Consistent with the PAGA statutory framework and the plain language and
8 legislative history of section 226(e), we hold a plaintiff seeking civil penalties
9 under PAGA for a violation of section 226(a) does not have to satisfy the
10 “injury” and “knowing and intentional” requirements of section 226(e)(1).”);
11 *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To
12 obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a
13 violation of section 226(a), which she has done, as discussed above.”);
14 *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011)
15 (holding that “for the purposes of recovering PAGA penalties, one need only
16 prove a violation of Section 226(a), and need not establish a Section 226(e)
17 injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28
18 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code §
19 226(e) injury to recover penalties under § 2699(f) of PAGA.”).⁴
20

21
22 ⁴ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal.
23 Nov. 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of
24 Lab. Code § 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under
25 PAGA.”) *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL
26 1743268 (“[T]he Court rejects CPS’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal.
27 Labor Code § 2699, ‘any provision of this code that provides for a civil penalty to be assessed and collected
28 by the Labor and Workforce Development Agency ... 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.’ Sections 2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of §
226(a) . . .”); accord *Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal., July 19, 2010, 09-CV-2268-
IEG) 2010 WL 2839417, *5-6 (“It is undisputed that GAT’s paychecks do not indicate the applicable hourly
rate of pay for the employee’s regular rate, overtime rate, or double-time rate of pay...The failure to provide
this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section 2699(f)
penalties are available.”).

1 176. Labor Code § 210 provides that “in addition to, an entirely
2 independent and apart from, any other penalty provided in this article, every
3 person who fails to pay the wages of each employee as provided in
4 Sections...204, 204b,...shall be subject to a civil penalty as follows: (1) For any
5 initial violation, one hundred dollars (\$100) for each failure to pay each
6 employee; (2) For each subsequent violation, or any willful or intentional
7 violation, two hundred dollars (\$200) for each failure to pay each employee,
8 plus 25% of the amount unlawfully withheld.” As a result of the faulty
9 compensation policies and practices described in detail above, Plaintiff and
10 all Aggrieved Employees are entitled to recover penalties under Labor Code §
11 210 through PAGA.

12 177. Defendants, and each of them, violated Cal. Labor Code 2802
13 when they failed to reimburse Complainant and all aggrieved employees for
14 the use of their personal vehicle, personal cellphone, or fuel costs borne by
15 them out-of-pocket on work related matters. To date, these reasonable and
16 necessary expenses incurred by and owed to them by Respondents remain
17 unpaid. As a result of the aforesaid violations, Plaintiff will seek civil penalties
18 pursuant to PAGA, Cal. Labor Code § 2699(f) against Defendants on behalf
19 of herself and all aggrieved employees who were not reimbursed for work
20 related expenses in violation of Cal. Labor Code Section 2802.

21 178. Further, pursuant to Cal. Labor Code § 98.6(b)(3), Plaintiff is
22 entitled to a civil penalty of \$10,000 for each violation of Cal. Labor Code §
23 98.6 as a result of Defendants retaliatory termination of Plaintiff because of
24 her having engaged in protected whistleblowing activities. Plaintiff will also
25 seek recover civil penalties for all Aggrieved Employees discharged in
26 retaliation for engaging in protected activities.
27
28

1 179. Similarly, Plaintiff seeks to recover a \$10,000 civil penalty per
2 violation pursuant to Cal. Labor Code § 1102.5(f) from Defendant on behalf
3 of herself and All Aggrieved employees who were termination in retaliation
4 for their own or they family members' protected reporting activities.

5 180. As a result of the acts alleged above, Plaintiff seeks penalties under
6 Labor Code § 2699, et seq. because of Defendants violations of Labor Code §§
7 98.6, 201, 203, 204b, 226, 226.7, 510, 512, 1102.5, and 2802, and IWC Wage
8 Order No. 4-2001 Section 11 - 12.

9
10 181. Further, an employee who prevails in a PAGA action is entitled to
11 recover his or her reasonable attorneys' fees and costs pursuant to Cal. Lab. Code
12 §2699(g).

13
14 **PRAYER**

15 WHEREFORE, the Plaintiff seeks judgment as follows:

- 16 1. That the Plaintiff be awarded all costs and litigation expenses incurred
17 in bring this action;
- 18 2. For reasonable attorneys' fees and costs incurred in bringing this
19 action as follows:
- 20 a. For Plaintiff's First to Fourth Causes of Action pursuant to Cal. Govt.
21 Code Section 12965(b);
- 22 b. For Plaintiff's Seventh Cause of Action pursuant to Cal. Labor Code
23 Section 1194;
- 24 c. For Plaintiff's Eighth Cause of Action pursuant to Cal. Labor Code
25 Section 218.5;
- 26 d. For Plaintiff's Tenth Cause of Action pursuant to Cal. Labor Code
27 Section 2802;
- 28

1 e. For Plaintiff's Eleventh Cause of Action pursuant to Cal. Labor Code
2 Section 226(e); and

3 f. For Plaintiff's Fourteenth and Sixteenth Causes of Action pursuant
4 to Cal. Code Civ. Proc. §1021.5; and

5 g. For Plaintiff's Seventeenth Cause of Action pursuant to Cal. Lab.
6 Code §2699(g);

7
8 3. For general damages, according to proof, including in the amount of all
9 unpaid and wrongfully withheld wages, including meal period
10 premiums and rest period premiums, and expenses incurred;

11 4. That the Plaintiff be awarded prejudgment and postjudgment interest;

12 5. Special damages, including loss of past and future earnings and
13 earnings capacity, in an amount according to proof;

14 6. Penalties and interest pursuant to Cal. Labor Code §§ 98.6, 203, 210,
15 226, 1102.5, and 2802;

16
17 7. Civil Penalties pursuant to Labor Code Private Attorney General Act of
18 2004 against Defendants for Plaintiff and for all Aggrieved
19 Employees for each initial and subsequent violations as specified in
20 Plaintiff's Eighteenth Cause of Action, namely:

21 a. A civil penalty against Defendants in the amount of \$100 for the
22 initial violation and \$200 for each subsequent violation as
23 specified in section 2699(f)(2) of the California Labor Code for
24 Plaintiff and all aggrieved employees for each and every pay
25 period during that occurred between June 30, 2019 and the date
26 of judgment and/or approval of settlement for violations of Labor
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Code §§ 201, 203, 226.7, 512, 2802, and IWC Wage Order 4-2001;

- b. A civil penalty in the amount of \$250 per employee per violation for the initial violation and \$1000 per employee per violation for each subsequent violation as specified by Labor Code §§ 2699 (f) and 226.3 of the for each and every pay period during that occurred between June 30, 2019 and the date of judgment and/or approval of settlement for violations of Labor Code § 226(a);
- c. A civil penalty in the amount of \$50 for the initial violation and \$100 for each subsequent violation as specified by Labor Code §§ 2699 (f) and Section 20 of the IWC Order No. 4-2001 for each and every pay period during that occurred between June 30, 2019 and the date of judgment and/or approval of settlement for violations of Section 3 of the Industrial Welfare Commission Order No. 4-2001;
- d. A civil penalty in the amount of \$50 for the initial violation and \$100 for each subsequent violation as specified by Labor Code §§ 2699 (f) and Section 20 of the IWC Order No. 4-2001 for each and every pay period during that occurred between June 30, 2019 and the date of judgment and/or approval of settlement for violations of Section 4 of the Industrial Welfare Commission Order No. 4-2001;
- e. A civil penalty in the amount of \$50 for the initial violation and \$100 for each subsequent violation as specified by Labor Code §§ 2699 (f) and Section 20 of the IWC Order No. 4-2001 for each

1 and every pay period during that occurred between June 30, 2019
2 and the date of judgment and/or approval of settlement for
3 violations of Section 11 of the Industrial Welfare Commission
4 Order No. 4-2001;

5 f. A civil penalty in the amount of \$50 for the initial violation and
6 \$100 for each subsequent violation as specified by Labor Code §§
7 2699 (f) and Section 20 of the IWC Order No. 4-2001 for each
8 and every pay period during that occurred between June 30, 2019
9 and the date of judgment and/or approval of settlement for
10 violations of Section 12 of the Industrial Welfare Commission
11 Order No. 4-2001;

12 g. A civil penalty in the amount of \$100 for the initial violation and
13 \$200 for each subsequent violation as specified by Labor Code §§
14 2699 (f) and 210 of the for each and every pay period during that
15 occurred between June 30, 2019 and the date of judgment and/or
16 approval of settlement for violations of Labor Code §§204 and
17 204b;

18 h. A civil penalty in the amount of \$100 for the initial violation and
19 \$250 for each subsequent violation as specified by Labor Code §§
20 2699 (f) and 1197.1 of the for each and every pay period during
21 that occurred between June 30, 2019 and the date of judgment
22 and/or approval of settlement for violations of Labor Code
23 sections 510 and 1194;

24 i. A civil penalty in the amount of \$50 for the initial violation and
25 \$100 for each subsequent violation as specified by Labor Code §§
26

2699 (f) and 558 of the for each and every pay period during that occurred between June 30, 2019 and the date of judgment and/or approval of settlement for the failure to pay minimum wage fixed by an order of the commission and violation of the IWC Wage Order 4-2001.

j. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

k. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1).

8. Restitution and/or disgorgement of all profits and monies wrongfully retained by Defendants in violation of Business and Professions Code § 17000 et seq. and 17200 et seq., pursuant to Business and Professions Code § 17203;

9. Injunctive Relief;

10. Punitive damages against Defendants pursuant to Cal. Civ. Code § 3294;

11. For such other and further relief as the Court deems just and proper.

Dated: October 2, 2020

POTTER HANDY, LLP

Rene Potter

Attorneys for Plaintiff,

JULIA RETTIG

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DEMAND FOR JURY TRIAL

Plaintiff, JULIA RETTIG, hereby demands a trial by jury.

POTTER HANDY, LLP

Dated: October 2, 2020

Rene Potter

Attorneys for Plaintiff, JULIA RETTIG