

3. Ms. Bockoras was first told that she could only pump breast milk in the bathroom, which is unsanitary. She was later sent to an old locker room that was furnished with nothing but a single chair on a filthy floor with dead bugs. At one point, the chair was removed and she had to sit on the dirty floor while pumping.

4. While Ms. Bockoras pumped milk for her baby in these unsanitary places, she was subjected to harassment by her coworkers. Male coworkers frequently pounded on the door and yelled in order to harass her. Twice, the door handle on the door to the room in which she expressed her milk was covered in grease and metal shards. A coworker brought Ms. Bockoras a bucket, jokingly comparing her to a cow being milked.

5. Verallia has failed to take these instances seriously and has taken no substantial steps to remedy or deter the harassment experienced by Ms. Bockoras. Her supervisor told her that he did not consider these incidents to be harassment.

6. Instead of meeting its obligations under FLSA and ACA, Verallia retaliated against Ms. Bockoras when she complained about the lack of a suitable place to express breast milk and the instances of harassment. After Ms. Bockoras complained, she was moved from the day shift to a rotating schedule that changes every few days and regularly requires her to work overnight. Even after she submitted a doctor's note stating she should only work days, she was not reassigned.

7. As a result of this retaliatory shift change, as well as the stress and humiliation Ms. Bockoras has experienced while attempting to pump at work, Ms. Bockoras has suffered significant harm.

8. Due to the ongoing stress related to her difficulties pumping at work, and her disrupted sleep schedule, Ms. Bockoras has experienced a significant disruption in her ability to

breastfeed her child. Ms. Bockoras has been unable to produce enough breast milk to feed her baby and, consequently, has been forced to supplement her child's diet with formula. Because of Verallia's misconduct, Ms. Bockoras has been unable to nourish her baby in the way she deems most appropriate.

JURISDICTION AND VENUE

9. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

10. Personal jurisdiction over Verallia is proper because Verallia does business in the Commonwealth of Pennsylvania, including operating the factory at which Plaintiff is employed, and because events giving rise to the action occurred in Pennsylvania.

11. Venue is proper under 28 U.S.C. § 1391(b) because the actions alleged to be unlawful were committed in and around Port Allegany, Pennsylvania, where Defendant's factory is located and where Plaintiff works.

THE PARTIES

12. PLAINTIFF Bobbi Bockoras is and was at all relevant times a resident of Smethport, Pennsylvania, and an employee in the Port Allegany, Pennsylvania factory of Verallia. At all times pertinent to this lawsuit, Plaintiff was a nonexempt "employee," as defined under FLSA. *See* 29 U.S.C. § 203(e)(1).

13. DEFENDANT Saint-Gobain Containers, Inc., doing business as Verallia North America, is a glass manufacturer headquartered in Muncie, Indiana, with factories in several states, including the Port Allegany factory. Defendant's parent is Compagnie de Saint-Gobain, a French corporation. In 2010, Defendant reported 4,395 employees and \$1.542 billion in sales. At all times pertinent to this lawsuit, Verallia is and was an "employer," *see* 29 U.S.C. § 203(d),

and an “enterprise engaged in commerce or in the production of goods for commerce,” *id.* § 203(s)(1), within the meaning of FLSA.

FACTUAL ALLEGATIONS

Ms. Bockoras’s Work at Verallia

14. Ms. Bockoras has worked for Verallia for nearly six years. She is one of only 30 female factory workers at the Port Allegany Verallia plant, which employs approximately 230 laborers.

15. Ms. Bockoras is a member of the Glass, Molders, Pottery, Plastics & Allied Workers Union (“GMP”), and she served as the president of her chapter, Local No. 54, from 2009 to 2012.

16. In 2012, Ms. Bockoras, a single mother, became pregnant with her second child.

17. Prior to and throughout her pregnancy, Ms. Bockoras worked as a palletizer operator at the Port Allegany Verallia plant. The palletizer operator position is a highly physical job that requires heavy lifting and often requires employees to conduct their work in confined spaces.

18. On April 29, 2013, Ms. Bockoras gave birth to a baby girl.

The Benefits of Breastfeeding and the “Nursing Mothers” Provision of the Affordable Care Act

19. A broad consensus exists among medical and public health experts that exclusive breastfeeding is optimal for infants for the first six months following birth, and that breastfeeding supplemented by solid food is optimal for at least the second six months following birth. The proven health benefits of breastfeeding, as well as the broader developmental, psychological, social, economic and environmental benefits of breastfeeding, are well established.

20. This medical and public health consensus is reflected in the numerous state and federal laws and programs aimed at promoting breastfeeding and facilitating the continuation of breastfeeding after women return to the paid workforce.

21. In line with this medical and public health consensus, Ms. Bockoras was committed to feeding her infant breast milk exclusively for the first six months and to continue breastfeeding her for at least the second six months.

22. Breastfeeding women who cannot be with their infants at all times need to express breast milk on roughly the same schedule as the child's nursing schedule so that there is a supply of milk on hand for the baby when the mother is not present to breastfeed. Expression of milk on a regular schedule is also required in order for a mother to maintain her supply and production of breast milk, and to relieve the sometimes painful physical pressure caused by the breasts' production of milk throughout the day. If a woman who is away from her baby does not pump breast milk on a regular basis consistent with the baby's feeding schedule, she will experience discomfort, pain, and engorgement of the breasts, and will be at risk of developing blocked milk ducts and infection, a reduction in milk supply, and ultimately, cessation of lactation.

23. While the schedule for pumping breast milk will vary from woman to woman based on a variety of factors, a new mother will typically need to pump every two to three hours that she is away from her baby for the first year of the baby's life.

24. Nursing women generally use a device called a breast pump in order to remove milk efficiently. Use of such a device is commonly referred to as "pumping." Ms. Bockoras uses a breast pump to express milk while she is away from her child.

25. Comfort and relaxation are required for optimal production of breast milk during nursing or pumping. Stress, physical discomfort, and inability to relax can reduce or prevent the production of breast milk during nursing or pumping.

26. In recognition of the strong medical and public health consensus on the health benefits of breastfeeding, as well as the barriers many women face in continuing breastfeeding upon returning to work, in 2010 Congress enacted a provision entitled “Reasonable Break Time for Nursing Mothers,” as part of the Patient Protection and Affordable Care Act (“ACA”) (hereinafter “the Nursing Mothers Provision”). The ACA amended section 7 of FLSA, 29 U.S.C. § 207, to require employers to provide:

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Pub. L. No. 111-148, 124 Stat. 119, § 4207 (codified at 29 U.S.C. § 207 (r)).

Ms. Bockoras’s Attempts Prior to Her Return to Work to Secure a Private Location in Which to Pump

27. About a week after giving birth, in or about early May, Ms. Bockoras sent a text message to her immediate supervisor, John Kelley, about her desire to pump at work when she returned to her job following maternity leave. Kelley responded that she could pump breast milk in the bathroom. Ms. Bockoras informed him that the law called for a location other than the bathroom, but she received no response.

28. Shortly after this exchange, Ms. Bockoras called the Human Resources Manager of the Port Allegany facility, Barry Healy, and informed him that she would need a place to

pump breast milk when she returned to work. She specifically mentioned the Nursing Mothers Provision of the ACA and explained that the law requires employers to provide break time and a private location for nursing mothers for up to one year following the birth of a child. She also emphasized that the Nursing Mothers Provision expressly stated that bathrooms cannot be used to satisfy the provision's location requirement. Healy said that he was not aware of that law.

29. Following that conversation, in or about the week of June 11, 2013, Ms. Bockoras went to the Port Allegany facility and personally dropped off a copy of the Nursing Mothers Provision with Tammy Ford, an assistant in the Verallia Human Resources department.

30. On or about June 14, 2013, Healy and Ford together called Ms. Bockoras about plans for her return. They told her that she would be permitted to pump in the "first aid room," would be placed on the day shift, and would be assigned to a new job, "reselect," a position that involves inspection of crates of bottles flagged as defective.

31. Healy explained on the call that the shift and position assignments were made to accommodate Ms. Bockoras's need to pump breast milk. Ms. Bockoras expressed relief and stated that the day shift assignment would make it possible for her to return to work soon after having her baby.

32. There are two different shifts available to employees at Verallia: the regular day shift and the "rotating" shift. The regular day shift is 7:30 a.m. to 3:30 p.m. The rotating shift consists of employees working the day shift (7:30 a.m. to 3:30 p.m.) for five days, having two days off, then working the afternoon shift (3:30 p.m. to 11:30 p.m.) for five days, followed by another two days off, and then working the night shift (11:30 p.m. to 7:30 a.m.) for five days, before starting the rotation again.

Ms. Bockoras Experienced Harassment While Attempting to Pump in the First Aid Room and Complained to Human Resources

33. On or about June 17, 2013, approximately six weeks after giving birth, Ms. Bockoras returned to work at Verallia. Upon her return to work, and for her first two weeks back on the job, she pumped in the first aid room, as she had been instructed to do by Healy and Ford.

34. Ms. Bockoras learned from a coworker that there had been rumors circulating prior to her return to work that she would be pumping in the “cooling booth”—a small glass room intended for palletizer operators to take breaks from the extreme heat of that section of the factory floor. Because the booth is made almost entirely of glass, she would have been completely visible to all of the employees on the factory floor. Ms. Bockoras learned that some of her coworkers had hung a sign in the cooling booth that said “pump house.”

35. Shortly after Ms. Bockoras’s return, another coworker offered her a red bucket for pumping, in an apparent reference to milking a cow. These incidents made Ms. Bockoras uncomfortable and self-conscious about pumping. However, she chose not to report them as harassment.

36. Temperatures in the factory typically get very high, and there is not sufficient air conditioning to cool many of the rooms, including the first aid room. As a result of high temperatures in the first aid room, Ms. Bockoras had to take off her shirt to remain cool while she was pumping. Being partially undressed and attached to the breast pump made her feel vulnerable, and the fear that someone would walk in on her made it difficult to relax.

37. During the period of time when Ms. Bockoras was pumping breast milk in the first aid room, people frequently tried to enter the room while she was pumping. On at least four occasions, male coworkers pounded on the door, yelling loudly to be let in. Ms. Bockoras’s coworkers were aware that she was inside the room and that she was pumping breast milk.

38. These disruptions upset Ms. Bockoras. On each of these occasions, when she heard knocking on the door, she had to disconnect the breast pump, put her shirt back on, and unlock the door. By the time she got to the door, the person who had knocked on the door had left and there was no one in sight. When she attempted to resume pumping, Ms. Bockoras was unable to relax and produced very little breast milk as a result.

39. On July 24, coworkers tried twice to enter the first aid room while Ms. Bockoras was inside pumping. Ms. Bockoras sent an email complaint to Ford about the interruptions, stating that she felt she was being sexually harassed. At 11:11 a.m., Ms. Bockoras wrote:

I am about tired of trying to pump and ppl literally trying to break down the damn door trying to get into the first aid room!!!! Scares the shit of me and then my milk won't let down, which hi[n]ders production for me. Just now is three separate occasions!!! So I need a sign or something this isn't working!!!!

See Email from Bockoras to Ford, dated July 24, attached hereto as Exhibit A.

40. At 11:57 a.m. on July 24, Ford responded to Ms. Bockoras's complaint: "Will take care of it when I come back tomorrow. Maybe try a sign and if that doesn[']t work we will have to figure something else out." *See* Email from Ford to Bockoras, dated July 24, attached hereto as Exhibit A.

41. Later that day, while Ms. Bockoras was attempting to pump, she was again interrupted by someone trying to enter the room. She verbally complained about the incident to Healy, who said he would look into it.

42. That afternoon, Ms. Bockoras wrote again to Ford: "So, it happened again, I just went to Barry [Healy].... I usually have over 6 oz pumped by now however I don't even have 6 yet due to the bs!!!!" *See* Email from Bockoras to Ford, dated July 24, attached hereto as Exhibit A.

43. The behavior previously exhibited by Ms. Bockoras's coworkers, including the "pump house" sign and the milk bucket, led her to believe that none of the men pounding on the door had any legitimate need to enter the room. The incidents in the first aid room caused her to feel intimidated and harassed.

44. Later on July 24, Ms. Bockoras verbally complained about the incidents in the first aid room to Kelley. She told him that she felt like she was being harassed.

45. Kelley's response was dismissive. He told Ms. Bockoras that these incidents did not constitute harassment because her coworkers, not the company, were responsible. Ms. Bockoras disagreed and stated that once she had informed the company of an incident of harassment by a coworker, the company had a duty to respond with an appropriate investigation and attempt to stop the harassment.

46. Ms. Bockoras also recommended to Kelley that the company secure a more permanent private location for an employee to pump breast milk so that it would be available to other employees should the need arise in the future. Kelley replied, "This situation will never happen again in this facility."

47. Ms. Bockoras was taken aback by this comment as well as Kelley's general indifference toward her complaints, as she had been on good terms with him throughout their workplace relationship.

48. On or about the evening of July 24, Ms. Bockoras sent Kelley a definition of "harassment" via text message because she felt that he had not taken her complaints seriously.

Ms. Bockoras Was Forced to Pump in an Unsanitary Locker Room with No Air Conditioning

49. On or about July 26, Healy and Kelley proposed to Ms. Bockoras three alternative locations in which to pump, all of which were unsuitable.

50. The Department of Labor (“DOL”) has made clear that the location provided for employees to express breast milk must be “shielded from view, and free from any intrusion from co-workers and the public.” DOL, *Fact Sheet #73: Break Time for Nursing Mothers Under the FLSA* (Aug. 2013), available at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>. The employer also “must ensure the employee’s privacy through means such as signs that designate when the space is in use, or a lock on the door.” DOL, Request for Information from the Public, Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073-01, 80076 (Dec. 21, 2010) (hereinafter DOL, Request for Info).

51. First, Healy and Kelley proposed a conference room in the middle of the “box shop,” which lacked air conditioning, was a long distance from Ms. Bockoras’s workspace, and had several large, uncovered windows as well as two doors without locks. Second, Healy and Kelley proposed the women’s shower room, in contradiction of the plain language of the ACA’s Nursing Mothers Provision, which specifies that the location provided must be “a place, *other than a bathroom*, that is shielded from view and free from intrusion from coworkers and the public.” 29 U.S.C. § 207(r)(1)(B) (emphasis added).

52. Finally, Healy and Kelley showed Ms. Bockoras a locker room that male coworkers occasionally used as a space to rest during their breaks. The room was filthy: its floor was covered in dust and dead insects, it had patches of missing flooring, and its walls were unfinished. Although the room was unsanitary and lacked basic amenities, Ms. Bockoras agreed to use it to pump breast milk because it was the best of the three options presented.

53. On or about July 26, when Ms. Bockoras agreed to use the locker room to pump breast milk, she pointed out that the space needed to be cleaned, and Healy said that the company

would do so. The following day, Kelley sent Ms. Bockoras a text message stating that the room was ready for her use.

54. When Ms. Bockoras arrived at the locker room to pump on her break, she found that, while the lockers had been removed, the room was still filthy and had obviously not been cleaned. Patches of the floor were still missing, and there was still a copious amount of dirt and dead bugs on the floor. Ms. Bockoras pumped there anyway because she had limited time left on her break and saw no other alternative.

55. Ms. Bockoras complained later that day about the room's condition to Ford, who insisted that it had been cleaned. Ms. Bockoras pointed out that there is a difference between "clean" and "empty," and said that while the locker room was empty, it was not clean.

56. On or about July 31, when Ms. Bockoras arrived in the unsanitary locker room to pump on her break, the room's sole chair had been removed. Ms. Bockoras had no choice but to pump while sitting on the filthy floor.

57. Following her break, Ms. Bockoras complained about the chair removal to Healy, who later replaced the chair. When he did, Healy saw the condition of the unsanitary room. Ms. Bockoras complained that the room was "disgusting." Healy said that Kelley had told him that the room had been cleaned. Despite seeing that this was not the case, Healy did not offer to have the room cleaned for Ms. Bockoras's use.

Immediately Following Ms. Bockoras's Efforts to Secure a Clean, Adequate Location to Pump, Verallia Switched Ms. Bockoras to the Rotating Shift

58. Later on July 31, Healy and Kelley informed Ms. Bockoras that she would be switched to the rotating shift, effective August 5. They gave Ms. Bockoras no reason for this shift switch.

59. This shift switch decision was made in retaliation for Ms. Bockoras's complaints about the inadequacy of the facilities that had been provided to her for pumping breast milk and about the harassment she had faced while pumping.

60. Healy and Kelley were aware when they made the decision to change Ms. Bockoras's shift that placing her on the rotating shift would pose significant difficulties for her because she was a single mother and was still nursing her baby.

61. During this conversation, Ms. Bockoras expressed her concern that the schedule switch would impact her ability to express breast milk and to continue nursing. Kelley and Healy did not respond, but merely reiterated the company's decision.

62. On or about August 1, Ms. Bockoras submitted a medical note requesting that she be kept on the day shift. Specifically, the note said: "It is recommended that the [patient] stay on day shift for the next 3 months to help her keep a regular schedule for breast feeding her baby." *See* Medical Note from Julie Baker of Cole Memorial Port Family Practice, dated Aug. 1, 2013, attached hereto as Exhibit B. There were open day shift positions at the time that Ms. Bockoras submitted her request to remain on the day shift.

63. When Ms. Bockoras submitted this note, Ford responded that she would probably be harassed regardless of what shift she was on.

64. Later that day, Healy called Ms. Bockoras to tell her that her request to remain on the day shift had been denied.

65. On or about August 5, Ms. Bockoras submitted two additional notes—one from her doctor and one from her child's pediatrician. Ms. Bockoras's doctor's note said: "Can only work day[] shifts at this time." *See* Medical Note from Dr. Jason Tronetti of Cole Memorial Port

Family Practice, dated Aug. 5, 2013, attached hereto as Exhibit C. The note from her child's pediatrician, Dr. Fayyaz Qadir, read:

The baby resides with her mother and her brother. She is breast fed. When the mother is at work the baby is with a caregiver. If the mother works at night she will have to sleep in the morning and the baby will have to be without her parent 16 hours a day. This will not be in the best interest of the baby.

See Medical Note from Dr. Qadir of Foothills Medical Group, dated Aug. 5, 2013, attached hereto as Exhibit D.

66. That evening, Healy informed Ms. Bockoras that her request for a shift modification had again been denied.

67. At Verallia, the shifts are assigned to employees based on both job duty and seniority, as established under the collective bargaining agreement. The union president has the authority to override the seniority assignment system in appropriate cases, including for medical reasons.

68. From October 2009 to October 2012, Ms. Bockoras served as president of Local Union No. 54, one of the local unions with members at the Port Allegany plant. During this time, she personally approved an override of the seniority assignment system in order to accommodate a diabetic employee, Dana Bachman, whose medical condition required him to work on the day shift.

69. Two other male employees at Verallia, Terry Corah and David Orloski, have also been granted shift changes from a rotating shift to the day shift for medical reasons. Corah and Orloski lacked seniority for these positions at the time they were granted.

Ms. Bockoras Experienced Further Harassment, to Which Verallia Failed to Respond Appropriately

70. On August 6, Ms. Bockoras filed a first grievance with her union about Verallia's refusal to honor her medical requests. *See* Grievance #54-13-22, dated Aug. 6, attached hereto as Exhibit E.

71. On or about the following day, the door handle to the room in which Ms. Bockoras pumps was "greased"—a prank that has periodically been perpetrated at the Port Allegany facility. In this instance, the knob to the unsanitary locker room was covered in thick grease with shards of metal in it. Ms. Bockoras took photographs of the greased door handle and her hand covered in grease and sent them to Ford (via email) and to Kelley and Healy (via text message).

72. In the email to Ford, Ms. Bockoras complained that this was yet another instance of harassment: "As if it hasn't been enough, someone greased the door knob to this room!!! As in I got a handful of grease....gross dirty grease!!!!" *See* Email from Bockoras to Ford, dated Aug. 7, attached hereto as Exhibit F.

73. The next day, Healy came to Ms. Bockoras's work station to talk to her about the incident involving the door handle. He told her that the company would find out who was responsible. However, Verallia did not conduct any formal investigation, nor did they take steps reasonably calculated to prevent the harassment from recurring.

74. Ms. Bockoras later learned from several of her coworkers that Kelley had informally accused several people of greasing the door handle, but had conducted no further investigation into the incident.

75. The perpetrator has not been identified, and no one has been disciplined in connection with the incident.

76. Shortly after the greasing incident, one of the local union presidents, Dave Knapp, informed Ms. Bockoras that Tom McKnight, Verallia's Director of Labor Relations, had contacted the international union to discuss the harassment Ms. Bockoras had been experiencing. Ms. Bockoras was told that the international union had encouraged her local union president, Denny Moses, to conduct sexual harassment training. No such training was conducted, either by the union or by the company.

77. Instead, Denny Moses, the president of Ms. Bockoras's local union chapter, publicly announced to everyone sitting in the lunch room during three different shifts to "watch out" around Ms. Bockoras because she had a lawyer and was "going after people for sexual harassment." Although Moses did not make this announcement during Ms. Bockoras's shift, several union members informed of her these announcements.

78. These lunch room announcements made Ms. Bockoras feel ostracized and uncomfortable at work.

79. On August 13, Ms. Bockoras filed a second grievance with her union concerning the knocking on the first aid room door on July 24 and the greasing of the door handle to the locker room on August 7. *See* Grievance #54-13-23, dated Aug. 13, attached hereto as Exhibit G.

80. On or about August 15, the door handle to the unsanitary locker room was greased again. One of Ms. Bockoras's coworkers, Tim Hurd, approached her at work and informed her that someone had greased the door handle, and he went to clean it off for her. Ms. Bockoras complained to Ford (via email) as well as Healy and Kelley (via text message). Kelley talked to Ms. Bockoras and Hurd about the incident, but conducted no further investigation into the incident.

81. On or about August 20, Ms. Bockoras contacted the international union president, Bruce Smith, by email to discuss the harassment incidents and the company's response.

82. On or about August 21, the international union vice president, Ricky Hunter, called Ms. Bockoras in response to her email. Hunter told her that officials from the international union had directed local union officials to conduct sexual harassment training but that Ms. Bockoras's name was never mentioned in this conversation. The training to which Mr. Hunter referred was the same training that Knapp had mentioned earlier in August to Ms. Bockoras, and which never actually took place.

83. Verallia failed to conduct an adequate investigation into the August 15 greasing incident or to take steps reasonably calculated to prevent the harassment from recurring. No perpetrator has been identified, and no one has been disciplined in connection with the incident.

Ms. Bockoras Resorted to Seeking Legal Assistance to Secure an Adequate Location to Pump

84. As of the end of July, the locker room still had not been cleaned or repaired and was still unsanitary. Additionally, Ms. Bockoras's requests for a shift modification had not been honored, and the company had still failed to respond to the allegations of harassment or take steps reasonably calculated to prevent it from recurring.

85. Ms. Bockoras became frustrated with the company's inaction and contacted the United States Department of Labor, as well as several legal organizations.

86. On or about August 16, the National Women's Law Center ("NWLC") contacted Verallia on Ms. Bockoras's behalf.

87. On or about August 21, the NWLC sent a letter to Verallia's headquarters to request their compliance with the Nursing Mothers Provision of the ACA. Specifically, the

NWLC asked that the locker room be cleaned; that action be taken to protect Ms. Bockoras's privacy; and that the company investigate and prevent further incidents of harassment.

Furthermore, the NWLC asked that Verallia grant Ms. Bockoras's shift change request, as the company had done in response to similar requests from other employees based on other medical conditions.

88. On or about August 23, almost ten weeks after Ms. Bockoras's return to work, Verallia began making improvements to the unsanitary locker room in which Ms. Bockoras had been pumping, including removing the door handle to the room and replacing it with a deadbolt lock. During this construction work, Ms. Bockoras continued to pump in the unfinished room.

89. On or about August 28, construction on the room was completed. The improvements included replaced flooring, new wall paneling, an air conditioner, a table, and a chair.

90. The same day, in a phone conversation with the NWLC, counsel for Verallia stated that the company would not accommodate the shift change request.

Since Being Switched to the Rotating Shift, Ms. Bockoras Has Experienced Additional Retaliation and Antagonism

91. Ms. Bockoras was removed from the palletizer operator position upon her return to work after maternity leave because the position was less compatible with her need for additional break time to pump. Ms. Bockoras was reassigned to reselect work because the position would afford her more break time flexibility.

92. However, since being placed on reselect, Ms. Bockoras's role has not been limited to reselect work. During many of her September shifts, she was assigned to a variety of non-reselect tasks on an ad hoc basis, such as running "the Lehr" bottling machine and

preventing and fixing belt line jams. Such tasks are ordinarily reserved for general labor pool employees with the lowest level of seniority, which is far below Ms. Bockoras's seniority level.

93. On or about September 20, when Ms. Bockoras was not scheduled to work, she signed up for a day shift in the "box shop" that became available—a job she was qualified to perform and that she had done many times before her pregnancy-related leave.

94. Ordinarily at Verallia, when a shift becomes available, employees who are not working on the day of the opening are given first priority for the shift.

95. Although Ms. Bockoras was scheduled to be off from work on September 20, and although she was the only employee to sign up for this shift, she was not awarded the open shift. Instead, the open shift was given to an employee who had worked an earlier shift, thereby awarding that employee a double shift.

96. The decision to pass over Ms. Bockoras for overtime was in direct violation of shift scheduling protocol. When the temporary shift supervisor, Mike Stiles, learned of this, he reported the incident to the Job Change Supervisor, Ron Wilfong, who also works under Kelley's management.

97. Ms. Bockoras believes that she was denied the overtime shift as further retaliation for requesting pumping accommodations.

98. On or about September 21, Ms. Bockoras spoke to a local union vice president, Al Lentz, about being unfairly denied the overtime shift. Speaking with him constituted a "first step," which is a precursor to filing a union grievance in the event the complaint is not resolved.

99. On or about September 23, Ms. Bockoras talked to Kelley about the overtime refusal incident. Specifically, Ms. Bockoras asked to be paid for the shift because she was entitled to it and asked why she was not given the chance to work, as she had no documented

restrictions aside from the need to pump. Kelley provided no rationale for the shift-staffing decision.

100. Kelley informed Ms. Bockoras on or about September 24 that she would be paid for the shift without explaining why she had been denied the shift in the first place.

Ms. Bockoras Experienced a Sharp Decrease in Her Breast Milk Supply as a Result of the Shift Change

101. Since her assignment to the rotating shift on August 5, Ms. Bockoras has experienced a more than 50% decrease in her milk supply. Before the shift change, she was pumping four times per shift and producing from 12 to 18 ounces per shift; now, pumping with the same frequency, she is producing only about three ounces per shift.

102. This reduction in Ms. Bockoras's milk supply is a direct result of her inconsistent work hours, her interrupted sleep schedule, and the sexual harassment, stress, and discomfort she has experienced while attempting to express breast milk in the inappropriate and unsanitary facilities that Verallia has provided.

103. During weeks in which she works the overnight shift, Ms. Bockoras must sleep during the day, when her baby used to nurse regularly every two hours. She still attempts to nurse during the daytime, but this greatly disrupts her sleep.

104. While she is awake at night and attempts to pump at work to produce milk for her baby when she is away, her body does not produce sufficient milk because it is unused to producing milk during the hours when her baby is usually asleep. Her body does not have time to adjust to this schedule because she must change from a night to a day sleep schedule every two weeks.

105. Following Ms. Bockoras's change to the rotating shift and the subsequent decrease in her breast milk supply, her daughter has become increasingly frustrated while attempting to nurse. Her baby has regularly refused to nurse from the breast and prefers to drink from a bottle as a result of the diminished amount of breast milk available while nursing.

106. By the middle of August, her daughter had stopped nursing almost entirely, except at night. Ms. Bockoras fears that the situation will grow worse and that her baby will soon refuse to breast feed altogether.

107. Because of her inability to meet her baby's dietary needs, Ms. Bockoras has been forced to supplement her daughter's diet with infant formula, which goes against her beliefs about what is best for her child.

108. In an effort to increase her breast milk supply, Ms. Bockoras has sought medical treatment from a lactation consultant and, at the consultant's advice, began taking the herbal supplement fenugreek and the prescription drug Reglan to increase her breast milk supply. She has also borrowed a more powerful "hospital grade" breast pump in the hopes of extracting more breast milk.

CLAIM FOR RELIEF

Retaliation Claim Under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

109. Plaintiff hereby incorporates paragraphs 1-108 as though fully set forth herein.

110. At all times pertinent to this lawsuit, Plaintiff is and was a nonexempt "employee" of Verallia within the meaning of FLSA. 29 U.S.C. § 203(e)(1).

111. At all times pertinent to this lawsuit, Defendant Verallia is and was an "employer," *see* 29 U.S.C. § 203(d), and an "enterprise engaged in commerce or in the production of goods for commerce," *id.* § 203(s)(1), under FLSA.

112. As a nonexempt employee of Defendant Verallia, Plaintiff is and was at all times relevant to this lawsuit covered by section 7 of FLSA and, therefore, entitled to break times to express breast milk pursuant to the Nursing Mothers Provision, 29 U.S.C. § 207(r).

113. Plaintiff engaged in a protected activity within the meaning of FLSA when she sought adequate accommodations for expression of breast milk pursuant to the Nursing Mothers Provision. 29 U.S.C. §§ 207(r)(1), 215(a)(3).

114. A causal connection exists between Plaintiff's engagement in the protected activity and the adverse employment action, evidenced by the temporal proximity between the protected activity and retaliatory shift change, as well as the antagonism the Defendant expressed against Plaintiff throughout her participation in the protected activity. Indeed, within three months of first seeking to effectuate her rights under the Nursing Mothers Provision, and within days of complaining about the harassment she experienced while pumping in the first aid room, Defendant switched her to a rotating shift. Further, in the weeks prior to the shift change, Plaintiff was in touch with Defendant on at least eleven separate occasions regarding her need for break time and an adequate location in which to pump breast milk.

115. Defendant retaliated against Plaintiff for having engaged in the protected activity.

116. As a result of the retaliation and harassment, Plaintiff has suffered damages including, but not limited to: physical distress, including a significant depletion of her breast milk supply and exhaustion; emotional distress due to her inability to adequately meet her infant's dietary needs, the difficulties she is experiencing in continuing breastfeeding her baby, and the fear of further workplace retaliation; and actual costs of infant formula and of seeking medical care to ameliorate her breast milk supply.

117. The Department of Labor has made clear in its initial interpretation of the Nursing Mothers Provision, 29 U.S.C. § 207(r), that if an employee has been “discharged or in any other manner discriminated against” for taking action to effectuate her breast pumping break time rights, “[she] may file a retaliation complaint with the Department or she may file a private cause of action seeking reinstatement, lost wages, and other appropriate remedies,” *see* DOL, Request for Info., 75 Fed. Reg. at 80078 (citing 29 U.S.C. §§ 215(a)(3), 216(b)).

118. Plaintiff is, therefore, entitled to lost wages and other appropriate remedies for Defendant’s retaliatory actions in violation of the law. 29 U.S.C. § 216(b).

119. Plaintiff seeks all remedies and damages permitted by law including pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant and award her all relief as allowed by law and equity, including, but not limited to, the following:

- a. Appropriate equitable relief including but not limited to declaratory and injunctive remedies, including, without limitation:
 - i. Reinstatement to a day shift position until such a time as cleared by her treating physician and her child’s pediatrician;
 - ii. Implementation of policy changes to protect the rights of nursing mothers at Verallia, including:
 - A. Provision of explicit notice to all Verallia employees regarding their rights under the Nursing Mothers Provision of the Fair Labor Standards Act;

- B. Designation of a permanent, private, sanitary location for pumping when an employee becomes a nursing mother;
 - C. Training for all Verallia managers and human resource personnel on the requirements of the Nursing Mothers Provision and on prevention and appropriate response to sexual harassment; and
 - D. Implementation of prompt reporting procedures to convey the results of any investigations conducted by Verallia or other entities into employee complaints of discrimination and harassment.
- b. Actual economic damages, as established at trial;
 - c. Compensatory damages, including, but not limited to, those for past and future pecuniary and non-pecuniary losses, emotional distress, suffering, humiliation, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;
 - d. Punitive damages, as allowed by law, in an amount to be determined at trial;
 - e. Pre-judgment and post-judgment interest at the highest lawful rate;
 - f. Attorney's fees and costs; and
 - g. Such further relief as justice requires or the law allows.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

DATED: November 6, 2013
Pittsburgh, Pennsylvania

WOMEN'S LAW PROJECT

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