SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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CAITLIN FERRARI, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

vs.

STEPHANIE MATECZUN, CITADEL BROADCASTING COMPANY, CITADEL COMMUNICATIONS COMPANY, LTD., and BUFFALO BILLS, INC.,

Defendants.

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Index No. 804125/2014

AMENDED SUMMONS SERVED WITH FIRST AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

TO THE ABOVE NAMED DEFENDANTS:

STEPHANIE MATECZUN
23 Ashley Drive
West Seneca, New York 14224

CITADEL BROADCASTING COMPANY
3280 Peachtree Road, NW, Suite 2300
Atlanta, Georgia 30305

CITADEL COMMUNICATION COMPANY, LTD.
951 Whitehaven Road
Grand Island, New York 14072

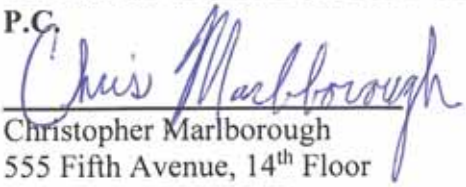
BUFFALO BILLS, INC.
One Bills Drive
Orchard Park, New York 14127

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Erie County as the place of trial.

Dated: May 9, 2014

THE MARLBOROUGH LAW FIRM, P.C.



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Index No. 804125/2014

FIRST AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

Plaintiff Caitlin Ferrari ("Plaintiff"), individually and on behalf of all others similarly situated, through her undersigned attorneys, for her First Amended and Supplemental Class Action Complaint against Defendants Stephanie Mateczun ("Mateczun"), Citadel Broadcasting Company ("Citadel Broadcasting"), Citadel Communications Company, Ltd. ("Citadel Communications," collectively with Citadel Broadcasting, the "Citadel Defendants"), and Buffalo Bills, Inc. ("Buffalo Bills," collectively with the other defendants, "Defendants"), alleges

upon information and belief, except as to the allegations that pertain to her, which are based upon personal knowledge, as follows:

NATURE OF THE ACTION

1. This prospective Class action arises out of Defendants' disregard of New York Labor Law and failure to pay Plaintiff and other employees during the course of their employment as National Football League ("NFL") cheerleaders and non-performing "ambassadors" in support of the Buffalo Bills football team in Buffalo, New York, known as the Buffalo Jills (the "Class," or the "Jills").

2. Professional cheerleading is a very profitable business. Forbes magazine estimates that the average NFL cheerleading squad rakes in more than $1 million a year. But when it comes to the Jills, Defendants have failed to pay the members of the Jills even the minimum wage for the extraordinary hours that they have devoted to Defendants' enterprise.

3. The Jills regularly perform to capacity crowds of more than 73,000 fans at Ralph Wilson Stadium during Buffalo Bills home preseason and regular season games. Defendants have also required Plaintiff and other Jills to attend regular practices, make dozens of personal appearances, provide free modeling services, sell swimsuit calendars and tickets to their own public appearances, solicit donations from local businesses for Defendants' profit generating events, and "provide professional cheerleading instruction" to young girls without compensation.

4. During the Class Period (defined herein), the Jills served Defendants as cheerleaders, models, salespersons, fundraisers and teachers, but to Defendants none of these efforts warranted compensation in accordance with New York Labor Law.

5. It wasn't always this way. Between late 1994 and 1996, the Jills fought back against the oppressive labor practices of their employers. In January 1995, the National Labor

Relations Board ("NLRB") determined that the Jills were year round employees with the right to unionize rather than independent contractors or seasonal employees. The following month, the Jills voted overwhelmingly in favor of unionization and formed the NFL Cheerleaders Association labor union (the "NFLCA").

6. In 1995, the Jills' unionization efforts were crushed by a sponsor who cancelled their personal appearances and attempted to lock them out of tryouts for the next year's squad. After the Jills filed a grievance concerning these actions with the NLRB, the sponsor dissolved the corporation that managed the Jills.

7. The NFLCA disbanded in 1996, when another potential sponsor demanded that the Jills agree to dissolve the union before it would execute a sponsorship agreement with them. Thereafter, the workplace reforms obtained by the unionized Jills were rolled back.

8. In 2002, Defendant Mateczun, a former cheerleader and member of the Jills under the NFLCA was promoted to Cheerleading Director of the Jills. Defendants then restored and/or enforced many of the illegal labor practices that the unionized Jills had worked so hard to overturn, including the requirements that the Jills: 1) work practices and games without compensation; 2) bear the cost of many work-related expenses, including uniform expenses, which should have been paid by their employers; 3) provide free modeling services to Defendants to use for promotional items and promotional photography; and 4) purchase dozens of these non-refundable promotional items and sell them on their own time without just compensation.

9. Moreover, under Mateczun's tenure, Defendants devised new ways to make money at the expense of the Jills, such as: 1) charging admission to members of the public to watch the Jills' unpaid auditions, practices and personal appearances; 2) requiring Jills to sell

tickets to their own personal appearances without compensation; 3) requiring Jills to solicit donations from local business to be used as raffle prizes at these uncompensated personal appearances; and 4) requiring Jills to provide professional cheerleading instruction without compensation in the highly profitable Junior Jills camp program.

10. On April 22, 2014, Plaintiff commenced this action by filing her Class Action Complaint. On the same day, a non-representative action was filed by five former members of the Jills, alleging that the defendants in that case failed to pay them in accordance with New York Labor Law, styled *Jaclyn S. et al. v. Buffalo Bills, Inc. et al.,* Index No. 804088/2014.

11. On April 24, 2014, Defendant Mateczun announced that Stejon Productions Corporation ("Stejon"), the management company through which Mateczun employs the Jills was indefinitely suspending all activities of the Buffalo Jills in light of pending litigation concerning allegations of New York Labor Law violations.

12. On May 7, 2014, Mateczun issued a statement through her attorney blaming Defendant Buffalo Bills for the management-led lock out and revealing that Buffalo Bills have been controlling the operations of the Jills all along.

13. During the last six years, Plaintiff and other Class members have worked an enormous amount of uncompensated time for Defendants. Indeed, Defendants have represented to prospective Jills that "being a Buffalo Jill requires a lot of time and dedication. You must have a significant amount of availability in order to fulfill your commitment as an NFL cheerleader."

14. During the Class Period (defined herein), Defendant Mateczun through the Citadel Defendants and later through Stejon, required Plaintiff and other Class members to attend all regular and preseason Buffalo Bills home games, attend regular practice sessions during the

cheerleading season which runs from mid-April to late December of each year, and make numerous personal appearances throughout the year without compensation.

15. Defendants knowingly failed to pay Plaintiff and other Jills minimum wage for all hours worked and required them to pay hundreds of dollars for the costs of their required uniforms and other work-related expenses in violation of New York Labor Law § 650, *et seq*, NYCRR §§ 142-2.1; 142-2.10; 142-2.22. Moreover, Defendants failed to pay spread of hours premium pay when they required Jills to work more than ten hours in a single workday in violation of 12 NYCRR §§ 142-2.4, 142-2.18, took illegal deductions and kickbacks from their employees in violation of New York Labor Law §§ 193, 198-b, and failed to pay wages when due in violation of New York Labor Law § 195. Finally, Defendants were unjustly enriched by their conduct.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action because Defendants operate or have operated their businesses in the State of New York, County of Erie. Moreover, Defendant Mateczun resides in this State and Defendants Citadel Communication and Buffalo Bills are headquartered in this State.

17. Venue in this Court is proper pursuant to CPLR § 503. Defendants regularly conduct business and provide services in the State of New York and within Erie County. Moreover, much of the work that is the subject of Plaintiff's claims was performed at Ralph Wilson Stadium and the Buffalo Bills Fieldhouse located in Erie County. In addition, Defendant Mateczun resides in Erie County and Defendants Citadel Communications and Buffalo Bills are headquartered in Erie County.

18. These claims arise from Defendants' systematic wage abuse against Plaintiff and other similarly situated Class members. Plaintiff brings causes of action based solely on and arising under New York law. The claims of Plaintiff and the Class concern Defendants' violations of New York law that occurred almost exclusively in New York and all or substantially all Class members are residents of New York.

PARTIES

19. Plaintiff is an individual who is currently a resident of the State of New York, and was employed by Defendants as a Buffalo Jills Cheerleader from approximately April 2009 until January 2010.

20. Defendant Buffalo Bills, Inc. is a New York corporation with its principal place of business in Orchard Park, New York. Buffalo Bills, Inc. owns, operates, and controls the Buffalo Bills, a professional football team that competes in the NFL and is based in and around Buffalo, New York.

21. The Buffalo Bills football team began competitive play in 1960 and the team was a charter member of the American Football League. The Buffalo Bills joined the NFL in 1970 as part of the American Football League–NFL merger. The Buffalo Bills is a valuable franchise that competes in one of the most popular sports in America. Some estimate that the Buffalo Bills football team, which is expected to be sold in the upcoming months following the death of its late owner Ralph Wilson, could fetch up to $1 billion.

22. Defendant Citadel Broadcasting Company is a Nevada corporation with its principal place of business in Atlanta, Georgia. Citadel Broadcasting is authorized to do business in New York. Defendant Citadel Communications Company, Ltd. is a Vermont limited partnership with its principal place of business in Grand Island, New York.

23. Citadel Communications Company, Ltd. owned and operated the popular radio station WGRF Buffalo, commonly known as 97 Rock. For over a decade—from 1999-2011—WGRF Buffalo was the flagship station for the Buffalo Bills and broadcasted Buffalo Bills games, as well as talk shows and analysis concerning the team.

24. The Citadel Defendants managed the Jills from the start of the Class Period (defined herein) until approximately December 2011.

25. In 2011, the Citadel Defendants were acquired by Cumulus Media, Inc. ("Cumulus") through a merger (the "Merger") and became an indirect wholly owned subsidiary of Cumulus on or about September 16, 2011. The Citadel Defendants divested themselves of the Buffalo Jills enterprise in or around December 2011.

26. Defendant Stephanie Mateczun is a former Buffalo Jills Cheerleader and Cheerleading Squad Captain. Defendant Mateczun was a member of the Jills in 1995 while the Jills were unionized under the NFLCA.

27. Defendant Mateczun is and has been the Cheerleading Director for the Jills for more than eleven years. Throughout the Class Period (defined herein), Defendant Mateczun has been an employer of the Jills. Until approximately December 2011, Mateczun served in this capacity as an employee of the Citadel Defendants. On December 30, 2011, Mateczun and her husband founded Stejon and the new company assumed management responsibilities with respect to the Jills enterprise. Mateczun is currently President and CEO of Stejon.

28. At times relevant to this action, Plaintiff and prospective Class members were "employees" covered by the New York Labor Law and Defendants were "employers" of Plaintiff and the Class of Jills she seeks to represent, as those terms are defined by New York Labor Law § 651(5) and (6), § 190(2) and (3) and applicable regulations 12 NYCRR § 142-2.14.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action individually and as a class action under CPLR Article 9, as representative of a class (the "Class") consisting of herself and of all current and former Buffalo Jills for work performed during the period from April 22, 2008 through the present (the "Class Period").

30. The Class is so numerous that joinder of all Class members is impracticable. Although the precise number of such persons is unknown, and the facts are presently within the sole knowledge of Defendants, Plaintiff estimates that the Class is comprised of approximately two hundred Class members. The Class is sufficiently numerous to warrant certification.

31. The claims of all Class members present common questions of law or fact, which predominate over any questions affecting only individual Class members, including:

a. whether Defendants violated New York Labor Law by failing to pay Class members the minimum wage for all hours worked;

b. whether Defendants violated New York Labor Law by requiring Class members to pay for their own required uniforms, cleaning costs, travel and other expenses while paying them less than the minimum wage after deducting the costs of those expenses;

c. whether the provision of non-cash benefits including a workplace parking pass, a Bills game ticket, gym memberships, surgery and/or tanning services satisfy the requirements of New York Labor Law for cash payment of wages.

d. If the provision of those non-cash benefits do constitute wages, whether Defendants violated New York Labor Law by withholding those benefits as punishment for violations of workplace rules;

e. whether Defendants violated New York Labor Law by failing to pay Plaintiff and the Class all wages, in the proper pay period;

f. whether Defendants violated New York Labor Law by failing to pay spread of hours premium pay due to Plaintiff and the Class;

g. whether Defendants were unjustly enriched by their wage policies; and

h. what is the proper measure of damages for the type of injury and losses commonly suffered by Plaintiff and the Class.

32. Plaintiff's claims are typical of those of the Class, because they are all current or former Buffalo Jills ambassadors and/or cheerleaders who sustained damages, including underpayment of wages as a result of Defendants' common compensation policies and practices. The defenses that likely will be asserted by Defendants against Plaintiff are typical of the defenses that Defendants will assert against the other Class members.

33. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the Class.

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy alleged herein for at least the following reasons:

a. this action will cause an orderly and expeditious administration of the Class' claims; economies of time, effort and expense will be fostered; and uniformity of decision will be ensured;

b. this action presents no difficulties impeding its management by the Court as a class action; and no superior alternative exists for the fair and efficient adjudication of this controversy;

c. Class members currently employed by Defendants would be reluctant to file individual claims for fear of retaliation, blacklisting or vitriolic attacks even after the end of their employment; and

d. the Class is readily identifiable from records that Defendants are legally required to maintain.

35. Pursuing each Class members' small claims on an individual basis is neither practical nor efficient.

36. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

37. Defendants have acted, or failed to act, on grounds generally applicable to the Class.

38. Without a class action, Defendants will likely retain the benefit of their wrongdoing and Defendants Mateczun and Buffalo Bills will continue a course of action which will result in further damage to the members of the Class.

39. Indeed, Defendants Mateczun and Buffalo Bills have already initiated a management lockout of the current members of the Jills to discourage participation in the lawsuit, and foster hostility towards those Jills who have spoken out about Defendants' unlawful practices.

STATEMENT OF FACTS

The Buffalo Jills

40. The Buffalo Jills are the cheerleading and ambassador squads in support of the Buffalo Bills NFL football team.

41. Each year, the Jills are comprised of approximately thirty-five to forty members including approximately twenty-five to thirty members of the cheerleading squad and ten members of the ambassador squad.

42. Employees are selected in April of each year following a series of auditions. Each year, most of the Jills are required to re-audition in order to maintain their jobs. Only a few pre-selected captains are exempt from the audition process.

43. Defendants have represented to prospective Jills that "[b]eing a Buffalo Jill requires a lot of time and dedication. You must have a significant amount of availability in order to fulfill your commitment as an NFL Cheerleader. … [A] Jill is obligated to participate in all 10 home games." The Jills have also been required to travel to games in Canada held in the Rogers Centre in Toronto, Ontario.

44. In addition to the requirement that they attend all home games, the performing Jills are required to participate in biweekly practices during the cheerleading season beginning in April and ending in late December of each year and attend numerous public appearances throughout the year. Defendants have represented to prospective Jills that "[i]n addition to mandatory practices two times a week (Tues & Thurs, 6:30-10:00pm) …, the Jills participate in a variety of community events that involve the Buffalo Bills, Citadel Broadcasting, numerous charities and area businesses. The Jills also host a popular Jr. Jills program for young cheerleaders/dancers, a Jill's golf tournament and other great events throughout the Western New York area."

45. Ambassador Jills have been described by Defendants as "non-performing Jills." They have informed prospective Jills that "[a]n Ambassador Jill is considered an NFL Jills Cheerleader and participates in all Jills events, home Bills games and projects" and is "part of

our team 100%." "The Ambassador Squad is expected to have a significant amount of availability in order to fulfill their extended requirement of personal appearances." Though Ambassador Jills are required to attend less practice sessions than performing Jills, they are "required to adhere to all BJC [Buffalo Jill Cheerleader] rules and regulations." Members of the Jills' ambassador squad are required to make many more personal appearances than members of the Jills' cheerleading squad.

46. According to Defendants, "attendance is extremely important" for all of the Jills and "only a minimum number of absences are permitted throughout the season."

47. In addition to games, practices and personal appearances, Defendants have required Plaintiff and other Class members to provide "professional instruction" to young girls from ages 7 – 17 without compensation. *See e.g.,* http://www.buffalojills.com/buffalo_jr_jills.php ("Cheer-Dance clinics will include professional instruction by the NFL Buffalo Jills cheerleaders!") (last visited May 8, 2014).

48. Defendants have also required Jills to provide them with modeling services without compensation for the annual Buffalo Jills Swimsuit Calendar and for product merchandising.

49. Moreover, Plaintiff and other Jills were required to purchase a set amount of calendars at a small discount. During the Class Period, Class members received as little as $5 per calendar without regard to the number of hours worked selling the calendars. If Class members failed to meet their sales quota, they were stuck with the unsold calendars. Defendants provided no refunds.

The Historic NFL Cheerleaders Association

50. In the mid- 1990's, the Jills organized and successfully obtained fair

compensation and workplace policies, but their success was short-lived as their aspirations for achieving a fair workplace for themselves and other NFL cheerleaders were crushed by the Jills' managing sponsors.

51. In 1994, the Jills complained of pay and other workplace practices almost identical to those at issue in this case. The 1994-1995 Rules and Regulations provided that the Jills: 1) would not be paid for games or practices; 2) were required to make numerous unpaid personal appearances; 3) were required to bear the cost of many work-related expenses which should have been paid by their employers, including uniform accessories (the primary uniforms were provided by the Jills management); and 4) were required to purchase $150 "worth of posters" (rather than calendars) of the Jills squad on behalf of the corporate sponsor and sell those posters on their own time. Moreover, the Jills were prohibited from engaging in conduct "unbecoming of a Jill" or any act that might hinder the rights of the Jills or the Buffalo Bills, and were prohibited from fraternizing with Buffalo Bills players or staff. In addition, violation of the strict rules and regulations could result in various levels of punishment, including being benched for the game (and the revocation of their ticket and parking pass to the Bills game) or dismissal from the squad altogether.

52. In late 1994, several members of the Jills established the NFL Cheerleaders Association. On December 14, 1994, they filed a Petition for Certification of Representation with the National Labor Relations Board for the right to form a union.

53. The petition was vehemently opposed by then Jills owner, Andy Gerovac, who argued that the Jills work was voluntary and that the Jills were independent contractors rather than employees.

54. On January 27, 1995, the NLRB issued a Decision and Direction of Election

finding that the Jills qualified as a bargaining unit and directed that an election be held among "[a]ll full-time and regular part-time cheerleaders employed by the Employer as cheerleaders for the National Football League Buffalo Bills ..." to determine whether the members of the Jills wished to be represented by a union.

55. Based on a set of facts nearly identical to those in this case, the NLRB rejected Gerovac's claim that the Jills were independent contractors rather than employees due to the level of control of the working conditions exercised by their employer. The NLRB Decision notes:

> The facts herein clearly establish that the cheerleaders are employees rather than independent contractors. The Employer controls their rehearsal schedules, their costumes, their routines, the times and places of performances and requires each to maintain a specific weight. The cheerleaders are not allowed to book their own performances and have no ability to employ or arrange for replacements. The Employer places strict limits on their discretionary time, prohibiting fraternization with members of the Buffalo Bills team or staff, and requiring all their actions as an individual to reflect the Jills' organization. All significant business decisions are made by the Employer which alone decides if and when appearances are made as well as how much, if anything will be paid for the appearance.

56. The NLRB also determined that the Jills were not seasonal employees, noting that the evidence "established that the cheerleaders work on a year-to-year basis rather than only or a specified duration."

57. In February 1995, the members of the Jills voted overwhelmingly (29-2) in favor of making the NFLCA the first and only NFL cheerleaders labor union. For the first time in Jills' history, the unionized Jills received cash compensation for working the Buffalo Bills games and aspired to encourage other NFL cheerleaders to join their union.

58. Defendant Mateczun was a member of the Jills during its historic unionization achievements. Plaintiff does not know whether she voted for or against the creation of the NFLCA, because the vote was conducted by secret ballot, but she certainly reaped the benefits.

59. Gerovac responded bitterly to the formation of the union, stating, "to me, jumping around on the sidelines isn't really work. It isn't labor at all" and "It's not like they work in the coal mines. They've never been instructed to stand under 3,000-degree iron ore in a steel mill."

60. In March 1995, the Jills filed a labor grievance, alleging that Gerovac constructively discharged them by cancelling public appearances and failing to notify the current members of the Jills of tryouts for the upcoming season's squad (the "1995 Management Lockout").

61. In April 1995, one month after the 1995 Management Lockout, Gerovac dropped the Jills and folded the corporation he set up to manage them.

62. The Jills then struggled to find a long term sponsor after their union merged with the International Brotherhood of Electrical Workers.

63. In September 1996, the Jills were forced to dissolve the union as a condition precedent to the execution of a sponsorship agreement with their new sponsor, Salvatore's Italian Gardens.

Failure to Pay Minimum Wage

64. Defendants have failed to pay Plaintiff and other Class members the minimum wage required by New York law for cheerleading performances, practices, personal appearances, modeling shoots, sales activities, solicitation of donations and professional cheerleading instruction. Indeed, Defendants have represented to prospective members of the squad that "Jills do not get paid for practices, game days or charity events."

65. Upon information and belief, Defendants have not paid even minimum wage for game day performances and biweekly practices prior to April 15, 2014, days before the initial Complaint in this action was filed, and have never paid the Jills for working Buffalo Bills home

games.

66. Moreover, since the initial Complaint was filed, Defendant Buffalo Bills has reneged on their agreement to pay current Jills for their game day performances.

Failure to Pay Spread of Hours Premium

67. On numerous occasions, Plaintiff and other Class members worked more than ten hours in a single workday.

68. For example, Plaintiff and Class members were required to meet the squad as early as 6 AM in Buffalo and were transported to events including the Hall of Fame Bowl in Canton, Ohio and a game in Toronto where they were required to perform. On these occasions, the Jills did not return until at least 12 AM.

69. On these occasions, Defendants failed to pay Plaintiff and other Class members spread of hours premium pay.

Unreimbursed Expenses

70. Defendants have represented to prospective Jills that "[u]pon making the team for the first time, each 'Rookie Jill' is responsible for purchasing her own uniform." During the Class Period those costs have ranged from approximately $400-$650 per cheerleader, which Defendants have described as an "investment."

71. Uniform costs are not reimbursed and are non-refundable. According to the Buffalo Jills website, "[o]nce you make the team & purchase your uniform, there is still a possibility of being released throughout the season based on performance & attitude. No financial investments will be refunded." http://www.buffalojills.com/news_story.php?ID=24 (last visited May 8, 2014).

72. Defendants have charged an annual fee for Jills to audition in order to retain their

position on the squad. During the Class Period audition fees have ranged from $45 to $50.

SUPPLEMENTAL ALLEGATIONS

73. On April 22, 2014, the initial Complaint in this action was filed by Plaintiff on behalf of herself and all other current and former Jills within the last six years. On that same day, a non-representative action was filed in this Court by five former members of the Jills who were employed between 2010 and 2014. The cases drew significant media attention and a public outcry for fair pay practices and reasonable working conditions for the Jills.

74. On April 24, 2014, the website Deadspin.com published a partial copy of the NFL Buffalo Jills Cheerleaders Agreement and Code of Conduct 2013-2014 and another series of rules and regulations that the Jills were required to follow concerning the Jills' glamour, etiquette, and hygiene standards.

75. Despite Defendant Mateczun's experience as a member of the Jills squad when the NLRB determined that the Jills were not volunteers or independent contractors, the Code of Conduct provides the false, illegal and unenforceable provision that "you are **NOT** an employee of Stejon Productions Corporation or Buffalo Bills, Inc. **This is strictly a volunteer/Independent Contractor position**" (emphasis in original).

76. The Code of Conduct reveals the extraordinary level of control exercised over the Jills by their employers, and includes many of the onerous provisions that the NFLCA fought to overturn, including penalties for "conduct unbecoming a Jill." The Agreement and Code of Conduct provides that the Jills: 1) would not be paid for games or practices; 2) were required to make numerous unpaid personal appearances; and 3) were required to bear the cost of many work-related expenses which should have been paid by their employers including all uniform expenses (estimated at $600). Moreover, performing Jills were required to purchase 50

calendars for a total of $500 and Ambassador Jills were required to purchase 75 calendars for a total of $750 and sell those posters on their own time for a $5.00 profit.

77. In addition, the Agreement and Code of Conduct provided that violation of the strict rules and regulations could result in various levels of punishment, including being benched for the game (and the revocation of their ticket and parking pass to their job) or dismissal from the squad altogether.

78. Also on April 24, 2014, two days after the initial Complaint in this action was filed, Defendant Mateczun announced that Stejon was suspending all operations of the Jills in light of pending litigation (the "2014 Management Lockout").

79. Shortly thereafter, the Buffalo Jills Alumni Association issued a venomous statement by Chris Polito, the Chairperson of its Board of Directors directed at the plaintiffs in the non-representative action. *See* http://buffalo-jills-alumni.vpweb.com (last visited May 8, 2014). In her statement, Polito blames the litigation for Mateczun's decision to shut down operations of the Jills squad, rather than pay its member in accordance with the law. The headline exclaims: **"Lawsuit brought by five former Jills derails the 2014 cheerleading season! maybe even the entire future of the Jills as Bills cheerleaders!"** Polito also attacked some of the plaintiffs who came forward, calling them "self-serving" "malcontents," and questioning their motivation for filing suit. Polito wrote, "Strangely enough, it wasn't enough of a nightmare that two of these very unhappy cheerleaders nevertheless tried out for the 2013 squad. Unfortunately, they did not make the cut. Makes one wonder if sour grapes has fueled this lawsuit."

80. Ms. Polito is the current non-elected Chairman of the Board of the Buffalo Jills Alumni Association and a former Director of the Jills prior to the formation of the NFLCA. The

non-elected President of the Buffalo Jills Alumni Association is Lori Marino, who had previously served as Business Manager and Director of the Jills soon after the Jills' unprecedented union reforms were rolled back. Upon information and belief, the Alumni Association website makes no reference to the fact that it was the heroic women of the 1994-1996 Buffalo Jills who made history by forming the first and only NFL cheerleader's labor union. Given the management affiliation of the Alumni Association's non-elected leadership, who formerly held positions similar to that of Defendant Mateczun, and their close association with Defendants Buffalo Bills and Mateczun, the Alumni Association's attacks on the workers and their attempt to foster disdain for those Jills who stand up against unfair working conditions comes as no surprise.

81. Defendants Buffalo Bills' and Mateczun's ham-fisted efforts to stifle participation in the lawsuit and punish the current Jills for the sins of their former members is disgracefully reminiscent of the union busting efforts of the Jills management in 1995.

82. On May 7, 2014, Mateczun issued a statement exposing the Buffalo Bills' micromanagement of the Jills and blaming Buffalo Bills for the 2014 Management Lockout. The statement reads in part, "the cheerleading squad exists for the benefit of the Bills, but without their support, the Jills cannot continue to operate." *See* http://www.buffalonews.com/sports/bills-nfl/jills-management-firm-blames-bills-for-lack-of-support-in-face-of-lawsuit-20140507 (last visited May 8, 2014). *Id.* Mateczun clarified her statement to a reporter for Buffalo WKBW's Eyewitness News, saying, "Without having the financial participation of the Buffalo Bills, it makes it impossible for me to run my company."

83. Mateczun also revealed that Defendant Buffalo Bills has been pulling the strings of the Jills enterprise all along:

> The Buffalo Bills own the trademark for the Jills; they control the field and everything that happens on that field, from the uniforms the cheerleaders wear to the dances they perform. Yet the organization appears content to attempt to wash their hands of any connection to their own cheerleading squad. … The Buffalo Bills management operates a football team valued by some at nearly $900 million. If people believe they don't maintain influence and control over every part of their operation, including their cheerleaders, they are mistaken. *Id.*

84. Also on May 7, 2014, Mateczun's attorney admitted that prior to the filing of the lawsuits, the Bills had offered to supplement the Jills' pay for the 2014 season, but withdrew this commitment after the lawsuits were filed. *Id.*

85. In a prepared statement, Mateczun's attorney added, "While much has been said about how the Jills were compensated, there was an extensive list of benefits given to the members of the squad that included free surgical procedures, free gym memberships, free tanning memberships, and free tickets and parking to all Buffalo Bills home games."

86. New York Labor Law requires that wages be paid in cash rather than game tickets, workplace parking privileges, tanning memberships, surgery or gym memberships.

87. Even if Defendants were permitted to pay their employees with products and services, the Jills Code of Conduct provides that these privileges can be revoked by Defendants for violations of the code. This would amount to an unlawful deductions in violation of NYLL § 193.

88. On May 8, 2014, the NFL held its annual Draft Day. While the Jills traditionally participate in the Buffalo Bills' Draft Day festivities and such participation is a requirement of the Jills' Agreement and Code of Conduct, this year they were benched due to the 2014 Management Lockout. Mateczun's attorney commented on the Jills' absence. "That is a day that the Jills would ordinarily be expected by the Buffalo Bills to participate in their promotional activities around draft day. We are not going to conduct business as usual as long as these legal

issues remain unresolved." *See* http://www.wgrz.com/story/sports/nfl/bills/2014/05/07/buffalo-jills-management-says-bills-lacking-on-accountability/8816517/.

Plaintiff's Experience

89. Plaintiff was employed by Defendants and served on the Buffalo Jills cheerleading squad from April 2009 until approximately January 2010.

90. Plaintiff had never heard of the NFLCA or the Jills' historic unionization efforts while she worked as a Jill. She did not know that the NLRB had determined that the Jills were not independent contractors, volunteers or seasonal employees. Moreover, she did not know that the contract that she was required to sign was illegal, unenforceable and falsely represented the status of her employment.

91. Plaintiff was required to attend all of the Buffalo Bills home preseason and regular season games during the 2009-2010 season. In connection with each game, Plaintiff was required to arrive early and participate in pregame activities and drills. She worked approximately eight hours for Defendants in connection with each of these ten games.

92. Plaintiff regularly attended bi-weekly 3.5 hour practices throughout the season for which she was uncompensated.

93. Plaintiff was required to participate in several Junior Jills program events providing professional cheerleading instruction without compensation.

94. Plaintiff was required to make approximately twenty-five personal appearances for Defendants. She was paid for approximately two of those appearances at a rate of approximately $20 per hour, not including transportation time. For all other personal appearances Plaintiff was paid nothing.

95. Plaintiff received one ticket to each Bills home game. She was also not required

to pay for parking in order to get to her job at the stadium. She never received any surgery provided by any of the Defendants or Bills sponsors.

96. A game ticket, the use of a parking space necessary to get to work, and services provided by Defendants' sponsors do not constitute wages under New York Labor Law, which requires payment of wages in cash or a cash equivalent.

97. Defendants did not consider the products and services provided to Plaintiff as substitutes for cash wages when they were provided. Defendants never provided Plaintiff with an IRS Form 1099-MISC, even though the value of the parking pass and game tickets that Plaintiff received in 2009 was in excess of $600, and would have required Defendants to issue a 1099 form to her had that their value been paid in cash.

98. Plaintiff was required to provide modeling services to Defendants for the 2010 NFL Buffalo Jills Swimsuit Calendar without compensation.

99. Plaintiff was required to purchase her quota of calendars and spend time trying to sell them. She received no compensation from Defendants but made a $5 profit on the sale of each calendar that she sold, which did not properly compensate her for the hours spent trying to sell the calendars.

100. Plaintiff was required to purchase a quota of tickets for the Buffalo Jills 2009 Golf Tournament at face value and spend time trying to sell those tickets at the same price.

101. Plaintiff received no spread of hours premium pay and was not compensated at all for events requiring extended travel with the Jills when she worked for more than ten hours in a single workday or when the spread of hours exceeded ten hours or both. This happened on at least two occasions while working for Defendants.

102. Plaintiff was required to purchase and maintain her mandatory Buffalo Jills

uniform. She was not reimbursed for the approximately $500 initial cost of the uniform. Plaintiff was also required to purchase other uniform items from Defendants including a turtleneck sweater and name tag during the course of her employment as a Jill. Plaintiff was not reimbursed for these expenses.

103. Plaintiff was not compensated for any costs related to the cleaning or maintenance of her required uniform.

104. Plaintiff incurred unreimbursed travel expenses for many of the personal appearances in which she was required to participate.

105. Plaintiff was required to pay an audition fee of approximately $45 to try out for the Jills in 2009. She was not rejected for the 2010 Jills squad and does not have sour grapes. She did not try out for the 2010 squad because she realized that she could not afford to pay the extraordinary expenses that Defendants demanded in order for her to remain on the squad.

106. Plaintiff does not want to "derail … the entire future of the Jills as Bills Cheerleaders." She simply wants to see the Buffalo Jills prosper and continue to support the Buffalo Bills on and off the field, while ensuring that she and other prospective Class members are compensated fairly and in accordance with the law for the substantial amount of work that they provided to Defendants.

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wage
(As to all Defendants)

107. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

108. This cause of action is brought against the Citadel Defendants for their conduct up to and including the time of their divestment of the Jills enterprise in approximately

December 2011 and against Defendants Mateczun and Buffalo Bills for their conduct throughout the Class Period.

109. Plaintiff and members of the Class were Defendants' "employees" within the meaning of the New York Labor Law §§ 190(2) and (3), and 651(5) and (6).

110. Plaintiff and Class members are not independent contractors, but are employees not subject to any exemption such that they would not be entitled to minimum under New York Law.

111. Defendants failed to pay Plaintiff and the Class the applicable minimum wage for all hours worked in violation of New York Labor Law Article 19, § 650, *et seq.*, and 12 NYCRR § 142-2.1.

112. Moreover, Defendants required Plaintiff and other Class members to pay for the costs of their required uniforms, cleaning costs, travel expenses and to incur other expenses required to be paid by their employer.

113. Due to Defendants' violations of New York Labor Law, Plaintiff and members of the Class are entitled to recover from Defendants, compensation at the New York State minimum wage rate for each hour worked, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and other compensatory and equitable relief pursuant to New York Labor Law Article 6 § 190, *et seq.*, and Article 19 § 650, *et seq.*

114. In light of Defendants Mateczun's and Buffalo Bills' longstanding and ongoing violations of New York Labor Law and applicable regulations, their failure to pay current employees the minimum wage has caused and is causing irreparable injury to Class members who are their current employees. Plaintiff and the Class also seek injunctive relief precluding Defendants Mateczun and Buffalo Bills from continued violations of these laws and

affirmatively mandating their compliance with the provisions of the New York Labor Law.

SECOND CAUSE OF ACTION
Illegal Deductions and Kickbacks
(As to All Defendants)

115. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

116. This cause of action is brought against the Citadel Defendants up to and including the time of their divestment of the Jills enterprise in approximately December 2011 and against Defendants Mateczun and Buffalo Bills throughout the Class Period.

117. New York Labor Law § 198-b provides that it shall be unlawful for "any person, … to request, demand, or receive, either before or after such employee is engaged, a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment."

118. Moreover, New York Labor Law § 193 provides "No employer shall make any deduction from the wages of an employee, except deductions which: are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made."

119. Plaintiff and other Jills were subject to deductions and/or required to pay monies to Defendants for the costs of uniforms, name tags, calendars, golf tournament tickets and other expenses properly borne by their employer.

120. Due to Defendants' violations of New York Labor Law, Plaintiff and the

members of the Class are entitled to recover from Defendants the amounts that they were required to pay to Defendants, reasonable attorneys' fees, costs and pre-judgment and post-judgment interest.

121. In light of Defendants Mateczun and Buffalo Bills' longstanding and ongoing violations of New York Labor Law and applicable regulations, Plaintiff and the Class also seek injunctive relief precluding them from continued violations of these laws and affirmatively mandating their compliance with the provisions of New York Labor Law.

THIRD CAUSE OF ACTION
Failure to Pay Timely Wages
(As to All Defendants)

122. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

123. This cause of action is brought against the Citadel Defendants for failure to pay timely wages for work performed by Plaintiff and Class members up to and including the time of their divestment of the Jills enterprise in approximately December 2011 and against Defendants Mateczun and Buffalo Bills for failure to pay timely wages for all uncompensated worked performed by Plaintiff and Class Members throughout the Class Period.

124. Defendants have failed to pay Plaintiff and the Class members all wages, including minimum wages, for the hours they each worked for Defendants. New York Labor Law requires that wages be paid on an employer's regular payday for all hours worked.

125. Due to Defendants' violations of the New York Labor Law, Plaintiff and the members of the Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs and pre-judgment and post-judgment interest.

126. In light of Defendants Mateczun's and Buffalo Bills longstanding and ongoing violations of New York Labor Law and applicable regulations, Plaintiff and the Class also seek

injunctive relief precluding them from continued violations of this law and affirmatively mandating their compliance with the provisions of New York Labor Law.

FOURTH CAUSE OF ACTION
Failure to Pay Spread of Hours Premium Pay
(As to All Defendants)

127. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

128. This cause of action is brought against the Citadel Defendants up to and including the time of their divestment of the Jills enterprise in approximately December 2011 and against Defendants Mateczun and Buffalo Bills throughout the Class Period.

129. Defendants regularly required Plaintiff to work more than ten hours in a single workday. Defendants failed to pay Plaintiff and other Class members spread of hours pay when working more than ten hours in a single workday, or when working a split shift or when the spread of hours exceeded ten.

130. Due to Defendants' violations of New York Labor Law, Plaintiff and the members of the Class are entitled to recover from Defendants their unpaid spread of hours premium pay, reasonable attorneys' fees, costs and pre-judgment and post-judgment interest.

131. In light of Defendants Mateczun's and Buffalo Bills' longstanding and ongoing violations of New York Labor Law and applicable regulations, Plaintiff and the Class also seek injunctive relief precluding them from continued violations of this law and affirmatively mandating their compliance with the provisions of New York Labor Law.

FIFTH CAUSE OF ACTION
Unjust Enrichment
(As to All Defendants)

132. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

133. This cause of action is brought in the alternative to Plaintiff's First and Second Causes of Action.

134. This cause of action is brought against the Citadel Defendants for their conduct up to and including the time of their divestment of the Jills enterprise in approximately December 2011 and against Defendants Mateczun and Buffalo Bills throughout the Class Period.

135. Defendants, by their policies and actions, benefited from, and increased their profits and personal compensation by failing to pay Plaintiff and the Class all wages due for work performed, including but not limited to the New York State minimum wage rate for all hours worked.

136. Defendants have accepted and received the benefits of the work performed by Plaintiff and the Class at the expense of Plaintiff and the Class.

137. Plaintiff and the Class have no adequate remedy at law.

138. It is inequitable and unjust for Defendants to reap the benefits of Plaintiff's and the Class's labor, which include unpaid minimum wage and unreimbursed expenses. Plaintiff and the Class are entitled to relief for this unjust enrichment in an amount equal to the benefits unjustly retained by Defendants, plus interest on these amounts.

139. In light of Defendants Mateczun's and Buffalo Bills' longstanding and ongoing unjust enrichment, Plaintiff and the Class also seek injunctive relief precluding them from continued violations of this law and affirmatively mandating their compliance with the provisions of New York Labor Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ferrari on behalf of herself and all members of the Class, respectfully pray that this Court enter judgment:

1. Certifying the Class described herein pursuant to CPLR Article 9;

2. Entering judgment against Defendants, jointly and severally, in the amount of Plaintiff's and Class members' individual unpaid wages, unreimbursed expenses, statutory damages and actual and compensatory damages and pre- and post-judgment interest as allowed by law;

3. Entering judgment against Defendants in the amount by which they were unjustly enriched.

4. Awarding Plaintiff the attorneys' fees, costs and expenses incurred in this litigation;

5. Issuing a declaratory judgment that the practices complained of herein are unlawful under New York Labor Law;

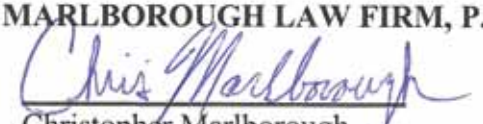
6. Enjoining Defendants Mateczun and Buffalo Bills from continuing the practices found illegal or in violation of the rights of the Class; and

7. Granting Plaintiff and the Class such further relief as this Court deems just and proper.

Dated: New York, New York
May 9, 2014

Respectfully submitted,

THE MARLBOROUGH LAW FIRM, P.C.

By: 

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