

At a Special Term of the Supreme Court,
held in and for the County of Erie, on the
22nd day of January, 2015.

PRESENT: HON. TIMOTHY J. DRURY, J.S.C.
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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

Plaintiff

ORDER

vs.

Index #: 804125/2014

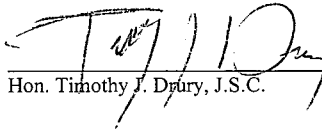
STEPHANIE MATECZUN,
CITADEL BROADCASTING COMPANY,
CITADEL COMMUNICATIONS COMPANY, LTD. and
BUFFALO BILLS, INC.

Defendants

Upon reading the Notice of Motion for Leave to Amend Class Action Complaint submitted by Sean E. Cooney, Esq., Dolce Panepinto, P.C. on behalf of Plaintiff dated November 13, 2014, the Affirmation of Sean E. Cooney, Esq. dated November 13, 2014 together with all Exhibits annexed thereto and the Memorandum of Law of Sean E. Cooney, Esq. dated November 13, 2014; the Affirmation in Response to Plaintiff's Motion for Leave to Amend of Louis Orbach, Esq., Bond, Schoeneck & King, PLLC, on behalf of Defendant Citadel Broadcasting Company, dated December 9, 2014; the Memorandum of Law of Jeffrey F. Reina, Esq., Lipsitz, Green, Scime, Cambria, LLP dated December 9, 2014 on behalf of Defendant Buffalo Bills, Inc.; the Affirmation in Opposition to Plaintiff's Motion for Leave to Amend of Dennis C. Vacco, Esq., Lippes, Mathias, Wexler, Friedman, LLP, dated December 9, 2014; the Reply

Affirmation of Sean E. Cooney, Esq. in Further Support of Plaintiff's Motion for Leave to Amend Class Action Complaint dated December 15, 2014 together with Exhibits annexed thereto; and oral argument having been waived by all parties, and due deliberation had herein in accordance with the Court's written Decision attached hereto, it is hereby

ORDERED, Plaintiff's motion to Amend the Complaint is granted.

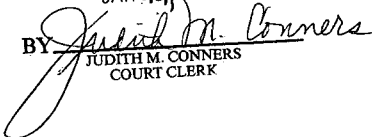


Hon. Timothy J. Drury, J.S.C.

GRANTED:

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JAN 22, 2015

BY 
JUDITH M. CONNERS
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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

Plaintiff

DECISION

Index No. 804125-2014

v.

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

Defendants

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All Others Similarly Situated

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TIMOTHY J. DRURY, J.S.C.

The Plaintiff Ferrari seeks to amend her Complaint to add three Plaintiffs from their non-representative action to her action and add the National Football League (NFL) and Stejon Productions Corporation (Stejon) as Defendants. The Plaintiff also seeks to amend her Complaint to include additional causes of action. The Buffalo Bills Inc. (The Bills), Stephanie Mateczun (Mateczun) and Citadel Broadcasting Company (Citadel) have opposed Plaintiff's motion. The three Plaintiffs that the Plaintiff Ferrari seeks to add to her Complaint are Plaintiffs in an action arising out of the same factual underpinnings as the instant action which contains the same allegations, but for the allegations whereby the Plaintiff seeks to proceed as a class action.

"In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit (citations omitted)" (*Postiglione v Castro*, et al, 119 AD3d 920, 922). The opposing parties have raised various issues relating to the proposed Amendments; however, the proposed Amendments have either answered their objections or through the issues they have raised may be arguable, from what the Court can determine at this point. The issues that have been raised can be revisited on motion, in a different posture, at a later time. The proposed amendments are not devoid of merit. The

copies of the agreements between the Bills and Citadel, which in part concern the operation of the Buffalo Jills, as independent contractors, were approved by Commissioner Roger Goodell for the NFL and are arguably evidence of the NFL's role in the conduct of the Jills cheerleading squad, which is at issue. As the Plaintiff has alleged, the NFL is a league created by the Bills and other member football teams and it draws income from the successful participation of the teams in the league.

More particularly, the Court decides as follows:

The Defendants have not opposed the aiding and abetting and common law fraud claims against the current Defendants and the Wage Theft Prevention Act (WTPA) claim against the Bills and Mateczun. The proposed amendment dropping the WTPA claim against Citadel renders Citadel's opposition to that claim moot. Also, the proposed Complaint omitting reference to "and other damages" and punitive damages is in response to the Bills' opposition to the addition of a claim relating to a retaliatory counterclaim.

The position of the proposed Plaintiffs is that they do not intend to litigate their claim in both actions if this amendment is granted and the actions are consolidated.

The proposed Plaintiffs have adequately explained why the Plaintiff Ferrari has not included Stejon as a defendant in the original Complaint, to wit: Stejon did not exist or manage the Jills when Ferrari was a member of the squad. Likewise, the NFL's role in the conduct of the cheerleaders was not evident until the Bills submitted copies of its agreements with Citadel. At the time the Bills and the other Defendants had moved to have the Complaint dismissed.

This Court has already denied a Motion to Dismiss the claim for quantum meruit when it was raised in the Jaclyn S. action. In any case, the Bills argument depends on the viability of the agreement classifying the cheerleaders as independent contractors, and the agreement is at least suspect. The proposed Plaintiffs have also argued that their reasonable expectations for some compensation is sufficient to support a cause of action for quantum meruit. This argument has merit.

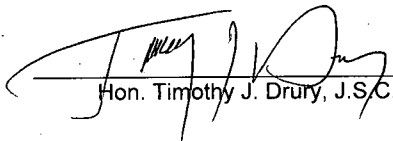
As to the proposed Amendment to include a Labor Law Section 215 cause of action for retaliation based on the Bills' filing of a counterclaim for up to \$100,000 against each Plaintiff, the Court has already noted that the proposed amendments have waived liquidated damages. Although the Bills have withdrawn its counterclaim, it has done so without prejudice depending on whether the agreements of the individual cheerleaders exist and can be located. At this juncture, the Court is not prepared to find that the Plaintiffs claim for a Labor Law Section 215 cause of action for retaliation is utterly without merit.

Finally, the Defendant Stejon and the other Defendants have not been prejudiced by the proposed Amended Complaint. The reasons are that the amendments have not been shown to be without a basis, the facts and circumstances underlying the amendments have not changed, and the litigation is proceeding expeditiously with joint discovery contemplated. Additionally, as has been stated, the NFL's role in the conduct of the Jills cheerleading squad was only discovered with the submissions of the earlier Motion to Dismiss.

Accordingly, the Court grants the Plaintiff's Motion to Amend her First Amended and Supplemental Class Action Complaint as it has been set forth in her petitions.

SUBMIT ORDER.

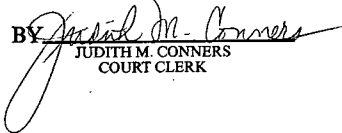
Buffalo, New York
January 8, 2015



Hon. Timothy J. Drury, J.S.C.

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JAN 08 2015

BY 

JUDITH M. CONNERS
COURT CLERK