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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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CAITLIN FERRARI, ALYSSA U., MARIA P., and MELISSA M. on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

THE NATIONAL FOOTBALL LEAGUE, BUFFALO BILLS, INC., CUMULUS RADIO COMPANY f/k/a CITADEL BROADCASTING COMPANY, STEPHANIE MATECZUN, and STEJON PRODUCTIONS CORPORATION,

Defendants.

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Index No. 804125/2014

SECOND AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

Plaintiffs Caitlin Ferrari, Alyssa U., Maria P. and Melissa M. ("Plaintiffs"), individually and on behalf of all others similarly situated, through their undersigned attorneys, for their Second Amended and Supplemental Class Action Complaint against Defendants National Football League ("NFL"), Buffalo Bills, Inc. ("Buffalo Bills"), Cumulus Radio Company, formerly known as Citadel Broadcasting Company ("Citadel"), Stephanie Mateczun ("Mateczun"), and Stejon Productions Corporation ("Stejon," collectively with Defendants Buffalo Bills, Mateczun, and Citadel, the "Bills Defendants"), allege upon information and belief, except as to the allegations that pertain to them, which are based upon personal knowledge, as follows:

NATURE OF THE ACTION

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

2. Defendant NFL conspired with, aided and abetted the Bills Defendants, and was unjustly enriched by this conduct. NFL Commissioner Roger Goodell personally approved several of the Buffalo Bills contracts requiring that the Jills be misclassified as independent contractors and providing that the Jills would not be paid for working Buffalo Bills games. At the time that the contracts were executed, Defendant Buffalo Bills and the NFL knew that the Jills were employees rather than independent contractors following a 1995 decision (the "1995 NLRB Decision") by the National Labor Relations Board, which found that the Jills were "clearly not independent contractors."

3. Indeed, Defendant Buffalo Bills' history of wage theft can be traced back to the inception of the Jills in 1967. Following the 1995 NLRB Decision, the Jills formed the National NFL Cheerleader's Association, the first and only NFL cheerleaders labor union (the "NFLCA") in order to achieve workplace reforms including fair pay. However, after only one year, the Jills were forced to disband the union in order to continue to cheer. The workplace reforms that the Jills had worked so hard to achieve were immediately rolled back.

4. In 2003, Forbes magazine estimated that the average NFL cheerleading squad earned more than $1 million a year for their teams. But when it comes to its own cheerleading squad, Defendant Buffalo Bills has gone to extraordinary lengths to ensure that the members of the Jills are not even paid the minimum wage for the large number of hours that they have devoted to the NFL and the Bills Defendants' enterprise continuously from 1967 until days after this lawsuit was filed, when the management locked the 2014 Jills out of their jobs (the "2014 Jills Lockout").

5. Professional football is an incredibly lucrative enterprise. It has been estimated that the NFL will earn more than $9 billion dollars in 2014. In 2012 alone, Commissioner Goodell received more than $44 million in compensation. The league recently announced an increase of its annual team salary cap for NFL players from $123 million to $133 million. NFL referees earn up to $70,000 per season. Even NFL team mascots reportedly earn up to $65,000 per season.

6. As a member of the NFL, the Buffalo Bills franchise and many of its employees have received similar financial benefits. Defendant Buffalo Bills recently reached an agreement to sell the franchise to Terry Pegula for $1.4 billion. The Buffalo Bills took in $256 million in revenue in 2012 and this year Buffalo Bills player salaries range from $420,000 to $16 million.

7. Defendant Buffalo Bills created the Jills to benefit the NFL and its team by fostering goodwill with the Bills fans. The Jills have become an integral part of the Buffalo Bills' fans' NFL experience. The Jills regularly appear on Defendants Buffalo Bills' and the NFL's websites and in their promotional materials. 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. The Bills Defendants have also required Plaintiffs 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 the Bills Defendants' profit generating events, "provide professional cheerleading instruction" to young girls without compensation and perform gymnastic feats for gratuities which were not provided to the employees.

8. According to a Bloomberg Business Week article, "[i]t would cost just $235,000 to pay every Bills cheerleader New York's $8 hourly minimum wage for 20 hours per week for 42 weeks per year, from tryouts in April through the Super Bowl. ***That works out to less than one one-thousandth of the Bills' estimated $252 million in revenue***." (Emphasis added.)

9. During the Class Period, as defined below, the Jills served the Bills Defendants as cheerleaders, models, salespersons, fundraisers and teachers. But to the Bills Defendants, none of these efforts warranted compensation in accordance with the New York Labor Law. Instead, with the assistance and approval of the NFL and Commissioner Goodell, Defendant Buffalo Bills intentionally misclassified the Jills as independent contractors rather than employees.

JURISDICTION AND VENUE

10. 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 NFL, Stejon and Buffalo Bills are headquartered in this State.

11. 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 Plaintiffs' 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 Buffalo Bills and Stejon are headquartered in Erie County.

12. These claims arise from the Bills Defendants' systematic wage abuse against Plaintiffs and other similarly situated Class members. Plaintiffs bring causes of action based solely on and arising under New York law. The claims of Plaintiffs and the Class concern the NFL and the Bills 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

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

14. Plaintiff Alyssa U. is an individual who is currently a resident of the State of New York, and was employed by Defendants Buffalo Bills, Stejon and Mateczun as a Buffalo Jills Cheerleader from approximately April 2012 until early 2013.

15. Plaintiff Maria P. is an individual who is currently a resident of the State of New York, and was employed by Defendants Buffalo Bills, Mateczun and Stejon as a Buffalo Jills Cheerleader from approximately April 2012 until early 2013.

16. Plaintiff Melissa M. is an individual who is currently a resident of the State of New York, and was employed by Defendants Buffalo Bills, Mateczun and Stejon as a Buffalo Jills Cheerleader from approximately April 2013 until early 2014.

17. Defendant NFL is an unincorporated association of thirty-two professional football teams, including Defendant Buffalo Bills. The NFL maintains its principal place of business in New York, New York. Roger Goodell has been the Commissioner of the NFL since 2006, when he was appointed to his position by a vote of the NFL team owners. He can be removed from his position by a vote of representatives from each of the NFL teams.

18. Defendant Buffalo Bills is a New York corporation with its principal place of business in Orchard Park, New York. Defendant Buffalo Bills 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. Defendant Buffalo Bills was created in 1960 when the Buffalo Bills football team began competitive play. 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 NFL franchise that competes in one of the most popular sports in America. Defendant Buffalo Bills also owns the right to the Jills cheerleading squad.

19. Defendant Citadel (now known as Cumulus Radio Corporation), is a Nevada corporation with its principal place of business in Atlanta, Georgia. Citadel is authorized to do business in New York. Citadel managed the Jills from 2001 until approximately December 2011. Citadel divested itself of the Buffalo Jills enterprise in or around December 2011.

20. Defendant Mateczun is a resident of New York. She is a former Buffalo Jills Cheerleader and Cheerleading Squad Captain. Defendant Mateczun was a member of the Jills in 1996 while the Jills were unionized under the ill-fated NFLCA. Defendant Mateczun is and has

been the Cheerleading Director for the Jills since 2002. Throughout the Class Period, Defendant Mateczun has been an employer of the Jills. Until approximately December 2011, Mateczun served in this capacity as an employee of Citadel. 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. Mateczun also maintains that she was an employee of Defendant Buffalo Bills in her role as director of the Jills.

21. Defendant Stejon is a New York Corporation with its headquarters in Erie County, New York.

22. At times relevant to this action, Plaintiffs and prospective Class members were "employees" covered by the New York Labor Law and the Bills Defendants were "employers" of Plaintiffs and the Class of Jills they seek 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

23. Plaintiffs bring this action individually and as a class action under CPLR Article 9, as representative of a class (the "Class") consisting of herself and all current and former Buffalo Jills who do not opt out of the action for work performed during the period from April 22, 2008 through the present (the "Class Period").

24. 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, Plaintiffs estimate that the Class is comprised of more than one hundred Class members. The Class is sufficiently numerous to warrant certification.

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

b) whether the Bills 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 constitute wages, whether the Bills Defendants violated New York Labor Law by withholding those benefits as punishment for violations of workplace rules;

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

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

g) whether the Bills Defendants violated the notice of pay rate requirements of the Wage Theft Prevention Act;

h) whether any defendants were unjustly enriched by their wage policies;

i) Whether any defendants are liable to Plaintiffs under a theory of quantum meruit;

j) whether the NFL aided and abetted one or more of the Bills Defendants in the foregoing violations of the New York Labor Laws and common law;

k) whether the NFL participated in a conspiracy with one or more of the Bills Defendants in furtherance of the foregoing violations of the New York Labor Laws and common law claims; and

l) what is the proper measure of damages for the type of injury and losses commonly suffered by Plaintiffs and the prospective Class.

26. Plaintiffs' 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 Plaintiffs are typical of the defenses that Defendants will assert against the other Class members.

27. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the Class.

28. 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's 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 the Bills Defendants would be reluctant to file individual claims for fear of retaliation, extension of the lockout, blacklisting or vitriolic attacks even after the end of their employment; and

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

29. Pursuing each Class member's small claims on an individual basis is neither practical nor efficient.

30. 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 the NFL and the Bills Defendants.

31. The NFL and the Bills Defendants have acted, or failed to act, on grounds generally applicable to the Class.

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

33. Indeed, Defendants Buffalo Bills, Mateczun and Stejon 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. Defendant Buffalo Bills has also asserted retaliatory counterclaims against Plaintiffs and "certain class members" based on the fact that Plaintiffs sought to assert their rights under the labor laws. Defendants withdrew the retaliatory counterclaim without prejudice in responses to Plaintiff's motion to dismiss.

FURTHER SUBSTANTIVE ALLEGATIONS

A. The Buffalo Jills Cheerleaders And Ambassadors

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

35. 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.

36. The Jills work all year round providing personal appearances. http://www.buffalobills.com/video/audio/The-John-Murphy-Show-July-15/1653cdc0-fae1-4470-ba3f-5ddedc0310b9 at 29:59-30:25 (last visited November 2, 2014). The Jills are most active during the cheerleading season which extends from April until December each year, when they are required to participate in mandatory team practices and cheer at Buffalo Bills home games.

37. The Jills cheerleaders (the "Performing Jills") are required to attend more practices, but less personal appearances than the Ambassador Jills.

38. The Ambassador Jills have been described by the Bills Defendants as "non-performing Jills." ("Ambassador 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.

39. The Ambassador Jills provided additional services to Defendant Buffalo Bills while the cheerleading Jills performed and prepared for the Jills home games. For example, the Ambassador Jills worked up the enthusiasm of the Bills fans at parking lot tailgate parties and were required by Defendant Buffalo Bills to run raffles and giveaways at specific sections of the stadium. Moreover, Defendant Buffalo Bills directed that the Ambassador Jills go to specific suites during the Bills games to entertain high profile Bills fans.

a. Time Commitment

40. During the Class Period, the Buffalo Bills yearbook has noted that "being a Buffalo Jill requires a lot of time and dedication."

41. Defendant Buffalo Bills website further states: "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." *See* http://blogs.buffalobills.com/2010/03/13/jills-tryouts-sunday/.

42. Moreover, the Bills website states: "[i]n addition to mandatory practices two times a week (Tuesday and Thursday, 6:30-10pm) … the Jills participate in a variety of community events that involve the Buffalo Bills, area businesses and numerous charities. The Jills also host three popular Jr Jills programs for young cheerleaders/dancers, a Jills golf tournament and other great events throughout the Western New York area." *See* http://www.buffalobills.com/news/article-2/Bills-cheerleaders-to-hold-tryouts-March-5th/8931ae9d-2bbd-4965-9ed4-a91bed081d2f (last visited November 2, 2014).

43. Defendant Buffalo Bills employee John Murphy described the time commitment as "a pretty major commitment on the part of the Jills." *See* John Murphy Show, http://www.buffalobills.com/video/audio/The-John-Murphy-Show-July-15/1653cdc0-fae1-4470-

ba3f-5ddedc0310b9 at 30:45-30:50 (last visited November 2, 2014).

44. Defendant Mateczun stated that the Jills "work very, very hard all summer long, and they are doing appearances 12 months out of the year so they all live around here, so they are available to the community all year long . . ." *Id.* at 29:52-30:02 (last visited November 2, 2014).

45. Moreover, members of the Jills were issued a "Code of Conduct" (the "Code of Conduct") which provides that "attendance is extremely important" for all of the Jills and "only a minimum number of absences are permitted throughout the season."

b. Auditions

46. Each year, the process for Class members to obtain or maintain their positions on the squad starts with the workshop and audition process. Employees are selected in March/April of each year following a series of auditions by a panel of judges.

47. According to Defendant Buffalo Bills' website announcing the criteria for eligibility to audition to become a member of the Jills: "The minimum requirement for auditions is that each young lady needs to be at least 18 years old by the first physical workshop they attend in March." *See* http://www.buffalobills.com/news/article-2/Bills-cheerleaders-to-hold-tryouts-March-5th/8931ae9d-2bbd-4965-9ed4-a91bed081d2f. (last visited November 2, 2014).

48. During the class period numerous Buffalo Bills employees including Bills players Terrance McGee, Chris Kelsay and James Hardy have served as judges and participated in the selection of the Jills based on criteria provided by Defendant Mateczun. *See e.g.*, Bills Focus: Buffalo Jills Tryouts video at 0:43 - 1:26, located at http://www.buffalobills.com/video/videos/Bills-Focus-2010-Buffalo-Jills-Tryouts/56ac1c75-7036-4dc7-bac4-4f66e05cf0a9 (last visited November 2, 2014).

49. On the Bills website, Mateczun stated, "we're instructing the judges to look for

that well rounded young lady …." *Id.* Kelsay spoke about the judging criteria on the website, "you want to put them in front of people, that's what they're going to have to do on Sundays. Whether they are dancers or ambassadors, they're going to have to be around people. So how they perform in front of people is obviously a big concern to the judges and to the staff." *Id.*

50. Each year, prospective Jills and most of the veteran Jills are required to re-audition and pay an audition fee of approximately $45-$50 in order to maintain their jobs. Only a few pre-selected captains are exempt from the audition process. Each year more than 200 applicants audition for the squad.

51. As Defendant Mateczun stated on the Bills website, "every former Jills does have to re-audition because they need to fight for their spot every year, because it keeps everyone on their toes." *See* Bills Focus: 2010 Buffalo Jills Tryouts, http://www.buffalobills.com/video/videos/Bills-Focus-2010-Buffalo-Jills-Tryouts/56ac1c75-7036-4dc7-bac4-4f66e05cf0a9 (last visited November 2, 2014).

52. The audition form that Jills and prospective Jills are required to complete bears the logos of Defendants NFL and the Buffalo Bills and requires the applicants to release the Defendant Buffalo Bills from any claims for personal injury and grant them permission to use of the applicant's image in its promotions.

53. Each year, the Jills auditions received extensive promotion by the Buffalo Bills and regular coverage on the Bills website. The Jills auditions have been featured as the centerpiece of the Bills home page.

54. For example, the Bills website features blogs written by members of the Jills "to provide their thoughts and insight to the Jills cheerleader audition process." *See* http://www.buffalobills.com/news/article-1/Jills-Cheerleaders-squad-chosen-Final-Blog--

/f02f8993-916d-4b01-a3c0-4887b3bd7039 (last visited November 2, 2014).

55. The Bills website also features a number of videos from the Jills' auditions produced by Defendant Buffalo Bills. The videos include statements from the Jills and live audition performances. Some videos were hosted by Defendant Buffalo Bills employees, while others were hosted by members of the Jills. *See* http://www.buffalobills.com/video/videos/Bills-Focus-2010-Buffalo-Jills-Tryouts/56ac1c75-7036-4dc7-bac4-4f66e05cf0a9 (hosted by Bills employee Chris Brown); http://www.buffalobills.com/video/videos/Bills-Focus-2012-Buffalo-Jills-Tryouts/ee2b811c-e3ee-4fe3-980b-3ecfa7c3f23d (last visited November 2, 2014).

56. All of the videos are produced by Defendant Buffalo Bills.

57. In order to watch the videos, visitors to the Bills website must sit through a commercial advertisement for the Buffalo Bills or one of the Bills' corporate sponsors.

58. Defendant Buffalo Bills has unveiled the names of the Jills selected for the squad on the Buffalo Bills website. This idea was based on a proposal by Andy Major, Defendant Buffalo Bills' Director of Marketing after he observed that another NFL cheerleading squad had done the same.

59. During the class period, admission has been charged to the public to watch the auditions.

60. Between audition fees charged to current and prospective Jills as well as admission fees charged to spectators, the auditions take in more than $10,000 per year. However, the Jills cheerleaders and ambassadors received none of that money.

c. Unpaid Bills Games

61. The Jills are required to attend all Buffalo Bills regular and preseason home games without compensation. Each of the Jills worked approximately eight hours in connection

with each home game.

62. The Jills were also required to attend at least one annual "home" game in Toronto, Canada as part of the "Bills Toronto Series." The Bills Toronto Series was approved by the NFL Commissioner and allowed the Bills to also play a pre-season "home" game at Rogers Centre in 2008 and 2010.

63. On occasions when the Jills were required to travel to Toronto, they worked more than ten hours in single workday without compensation. Defendant Buffalo Bills regularly transported the Jills from Buffalo to Toronto for the games. They generally left early in the morning and returned after midnight.

64. The Jills also occasionally worked longer than ten hours in a single workday without compensation in connection with other out of town games, including the 2009 Hall of Fame Game in Canton, Ohio.

65. The requirement that the Jills receive no compensation for working Buffalo Bills home games was a condition of several contracts between Defendants Buffalo Bills and Citadel that were approved by Roger Goodell and the NFL. Defendant Buffalo Bills required that Citadel "have all of its cheerleaders execute a[n attached] 'Buffalo Jills Cheerleading Agreement and General Release.'" Defendant Buffalo Bills also required Citadel to promptly return the executed agreements to Defendant Buffalo Bills. The Cheerleading Agreements misclassified the Jills as independent contractors, rather than employees and unlawfully required the Jills to waive their right to compensation for working the Bills home game ("Contractor will not receive payment for appearances at the Buffalo Bills football games.").

66. At the time the agreements were executed Defendants Buffalo Bills and the NFL knew that the Jills were employees rather than independent contractors.

d. Unpaid Practices

67. The Jills cheerleaders have been required to participate in biweekly practices during the cheerleading season beginning in April and ending in late December of each year without compensation. These practices lasted seven to eight hours per week. Ambassador Jills are required to attend some but not all practices. None of the Jills received compensation for practices.

68. The Bills Defendants have represented to prospective Performing Jills that they were required to participate in "mandatory practices two times a week (Tues & Thurs, 6:30-10:00pm)." *See e.g.,* Buffalo Bills Website, http://www.buffalobills.com/news/article-2/Bills-cheerleaders-to-hold-tryouts-March-5th/8931ae9d-2bbd-4965-9ed4-a91bed081d2f. Mandatory practices run from April until the end of the NFL season in December and often ran until as late as 10:30 pm.

69. During practices, the Performing Jills worked on their choreographed routines. The practices were usually run by Defendant Mateczun and Kelli Wagner. Bills employee Gretchen Geitter attended numerous practices where she made real time changes to the choreographed routines as they were being performed by the Jills.

e. The Junior Jills Programs

70. During the Class period, the Plaintiffs and the other Jills have worked at numerous Junior Jills program events in Rochester, Buffalo and/or Toronto. During the class period members of the Jills have been required to participate in at least two of the three Junior Jills camps.

71. The Junior Jills program was coordinated by Defendants Mateczun and Bills' employee, Gretchen Geitter.

72. The Buffalo Bills website describes the Junior Jills program as follows: "Participants involved in the program have the opportunity to learn from the Buffalo Jills choreographed dances, cheerleading skills and instruction as well as learning how to work as a team." *See* http://www.buffalobills.com/video/videos/Jr-Jills-perform-at-camp/32efd9ec-26e1-4836-90a5-000c5fa1412f (last viewed on November 2, 2014).

73. The Bills website also provides:

> The program provides young cheerleaders ages 5-17 the unique opportunity to learn from NFL cheerleaders and perform at Buffalo Bills games and events. "The Jr. Jills program is a short summer camp with four workshops in August," said Buffalo Jills Director Stephanie Mateczun. "It all combines into one large routine that the kids perform on-field at the Kids Day game."[1]

See http://www.buffalobills.com/news/article-1/Jr-Jills-program-now-accepting-registrations/2faa4b6c-8bbe-4c4f-a40f-6ab43df93386.

74. Although substantial fees of more than $250 per program participant are charged, the Jills are required to provide professional cheerleading instruction without compensation.

75. Buffalo Bills heavily promotes the Junior Jills program on its website. It provides information about enrollment in the program and also maintains a series of videos from Junior Jills events featuring the Jills. Some of the videos are hosted by a Buffalo Bills employee and other are hosted by a member of the Jills. *See* http://www.buffalobills.com/video/videos/Jr-Jills-perform-at-camp/32efd9ec-26e1-4836-90a5-000c5fa1412f (last viewed on November 2, 2014) (hosted by Hannah Buehler); http://www.buffalobills.com/video/videos/Rochester-Jr-Jills-perform-at-camp/f73698fb-9fa0-4b03-b5ec-6af7b5047696 (last viewed by November 2, 2014) (hosted by a member of the Jills).

[1] The Buffalo Bills' Kid's Day Game is an enormously popular annual promotion for a Bills' preseason home game.

76. All of the videos are produced by Defendant Buffalo Bills.

77. In order to watch the videos, visitors to the Bills' website must sit through a commercial advertisement for the Buffalo Bills or one of the Bills' corporate sponsors.

f. Sales and Fundraising Services

78. Plaintiff and other Jills were required to provide sales and fundraising services without compensation.

79. Performing Jills were required to purchase approximately 50 Jills swimsuit calendars at a cost of $10 each while Ambassador Jills were required to purchase approximately 75 Jills swimsuit calendars at a cost of $10 each. The Jills were permitted to sell the calendars for $15. They were otherwise not paid anything for the hours spent trying to sell the calendars. No refunds were provided if any Jill failed to sell her quota of calendars.

80. Each of the Jills was also responsible for selling four tickets to the Jills annual golf tournament. Tickets cost $125 for a total commitment of $500 per Jill. Any Jill who failed to meet the minimum sales requirement was subject to personal financial loss and punishment at the discretion of management. The Jills were not compensated for time spent trying to sell these tickets nor for any costs absorbed by their inability to sell the tickets.

81. Each of the Jills was responsible for soliciting three donations from local businesses for gift baskets valued at a minimum of $30 each for a total of $90. Jills that were unable to solicit the required number of baskets were required to pay out of pocket to meet the minimum solicitation requirement. The Jills were not compensated for time spent trying to sell these tickets nor for any costs absorbed by their inability to sell the tickets.

g. Modeling Services

82. Plaintiff and the other Jills provided the Bills Defendants with uncompensated

modeling services.

83. In addition to the requirement that the Jills sell a minimum number of swimsuit calendars, they also modeled for the calendar without compensation. The calendars were available for purchase on the Buffalo Bills website. Not only did the Buffalo Bills make a profit from the sale of calendars, they made it more difficult for the Jills to meet their mandatory calendar sales quota by offering the calendars for sale on the Bills website www.shopthebills.com, and accepting pre-orders before the calendars were available to the public. *See* http://www.buffalobills.com/news/article-1/Jayanti-Jills-Calendar-Cover-Finalist-QA/ef4e482d-0561-46c0-b40b-53bceb26275e (last visited November 2, 2014) ("Pre-order your Jills Cheerleader 2013-2014 Swimsuit Calendar NOW by clicking here.").

84. Defendant Buffalo Bills created a promotion in connection with the release of the swimsuit calendar called "Jills Week," providing substantial content for the Bills website during the off-season, including profiles on each of the Jills who were finalists for the cover of the swimsuit calendars. *See id*. Defendant Buffalo Bills has also premiered the cover for the Jills swimsuit calendar on its website. As explained by Defendant Buffalo Bills:

> **Jills Week on buffalobills.com:** Jills Week will bring fans exclusive video access into the making of the Jills swimsuit calendar. During Jills Week, fans are encouraged to tweet using the hashtag #Jillsweek. In addition to the videos, Jills Week will also feature behind-the-scenes interviews with the girls, photo galleries, and five cover finalists- all leading up to the big reveal cover announced on Sunday, July 21st on buffalobills.com.

See http://blogs.buffalobills.com/2013/07/15/bdc-715-jills-week-on-buffalobills-com/ (last visited November 3, 2014).

85. Defendant Buffalo Bills and Mateczun also jointly determined the locations for several of the calendar shoots. Moreover, Defendant Buffalo Bills paid fees associated with the production of the calendars.

86. Defendant Buffalo Bills sent its employees, including Hannah Buehler, to document the Jills annual calendar shoot and create a series of videos featuring the Jills modeling for the Bills. The videos are available exclusively on the Bills website. As described on the Bills website:

> This offseason, the Buffalo Jills have been busy traveling around the greater Western New York area and Siesta Key, Florida for the Jills swimsuit calendar shoot.
>
> Our cameras have been following the girls through the process, and we're proud to announce that we are hosting "Jills Week" right here on buffalobills.com July 15-21.
>
> Jills Week brings you- the fans- exclusive video access into *the making of* the Jills swimsuit calendar. Videos start in the winter at Holiday Valley Resort in Ellicotville, New York, head to Siesta Key, Florida, and end at Turning Stone Resort and Casino in Verona, New York.
>
> During Jills Week, we encourage fans to tweet using the hashtag #Jillsweek.
>
> In addition to the videos, Jills Week will also feature behind-the-scenes interviews with the girls, photo galleries, and five cover finalists- all leading up to the big reveal cover announced on Sunday, July 21.
>
> …
>
> Don't miss Jills Week starting July 15-21 on buffalobills.com!

87. Bills have also featured a series called "Jill of the Week" on its website, profiling a member of the Jills with photos and/or videos and interviews. *See e.g.*, http://www.buffalobills.com/video/videos/Jill-of-the-Week-Ashley/a4469522-fb72-4664-8ad3-1ae9f30f712a (last visited November 6, 2014).

88. In order to watch the calendar shoot or Jills of the Week videos, visitors to the Bills' website must sit through a commercial advertisement for the Buffalo Bills or one of the Bills' corporate sponsors.

89. The Jills have also provided uncompensated modeling services for Bills sponsors which were promoted on the Bills website, including jewelry manufactured by Defendants NFL

and Buffalo Bills sponsors, Alex and Ani. *See* Bills Partner with Alex and Ani, located at http://www.buffalobills.com/news/article-1/Bills-Partner-with-Alex-and-Ani/5e44aae2-bb02-4461-b475-b8bd8e99857b (last visited November 3, 2014).

h. Personal Appearances

90. Plaintiffs and other class members are required to make numerous unpaid personal appearances.

91. The Jills were required to provide a minimum of twenty-five hours of non-compensated appearances.

92. There were five categories of personal appearances: 1) Charity appearances; 2) Club/Team Related appearances; 3) Trade Promotions; 4) Sponsor Events and 5) Paid Promotions.

93. Upon information and belief, the first four categories of appearances were generally unpaid. During the class period, Jills were paid $25 per hour for a limited number of paid promotions and were paid at a lower rate for some "charity appearances."

94. The unpaid Club/Team Related Appearances, included "kick off banquets, Draft Day Events, Training Camp and Community Parades" for the benefit of Defendant Buffalo Bills.

95. According to the personal appearance guidelines, "[t]hese types of promotions are directly requested by the Buffalo Bills Organization." Other mandatory appearances include Tim Horton's Camp Day and the Jills Golf tournament.

96. When Defendant Mateczun was not sure if an appearance should be paid, she asked Defendant Buffalo Bills. For example, the Marketing Manager for Defendant Buffalo Bills, Marcey Bryant, requested that the Jills appear at the opening for a new M&T Bank branch. Mateczun responded by asking, "Would this be a favor to the Bills or an M&T paid appear?

Either way, I'll do my best."

97. The Jills were required to arrive 15 minutes early for each appearance, which the personal appearance guidelines described as "gratis time." They were also encouraged to stay an extra five minutes at the end of each promotion.

98. During personal appearances, the Jills were assigned a wide variety of tasks, including selling raffle tickets, posing for photos, performing dance routines, assisting with auctions, and directing traffic flow. Their duties and form of attire at the personal appearances were determined by the organization requesting the appearance, including Defendant Buffalo Bills and subject to Defendant Mateczun's approval.

99. Jills were prohibited from accepting payment for any appearances "unless authorized by the Director or Coordinator."

100. Many of the Jills personal appearances were made at the request of Defendant Buffalo Bills.

101. Upon information and belief, Defendant Buffalo Bills has provided reimbursement for expenses directly to members of the Jills for personal appearances.

i. Unreimbursed Expenses

1) Uniform Costs

102. The Bills 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, an amount which the Jills management described as an "investment."

103. Moreover, it was mandatory for the Jills to wear specific brands of hosiery with their uniforms, which they were required to purchase as part of their uniform.

104. The Jills were required to style their hair, nails and makeup in a manner that conformed to Defendants' specific "Glamour Requirements." For example, the Glamour requirements state: "these cosmetic products must be worn while auditioning or while in Jills uniform: foundation, blush, 3 natural eye shadow colors (lid cover highlighter, definer), eyeliner, mascara and red lipstick."

105. Uniform costs are not reimbursed and are non-refundable. According to the Buffalo Jills' website (which was removed from the internet after this lawsuit was filed), "[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."

106. Moreover, the Jills were responsible for absorbing the cost of any changes to the uniform initiated by Defendant Buffalo Bills. The Jills' Code of Conduct reads: "in the event the Buffalo Bills change and/or revise their uniform in any way, it is each Jills responsibility to purchase the updated uniform pieces needed to match our team."

107. However, when the Jills uniform design was changed in 2011, Defendant Buffalo Bills contributed $7,500 to the cost of the new uniforms.

108. Upon information and belief, Defendant Buffalo Bills also provided certain uniform items for the Buffalo Jills to wear in their performances including, but not limited to: 1) pink pom poms to use during performances during Defendant Buffalo Bills and Defendant NFL's, Breast Cancer Awareness month promotions; 2) santa suits to wear during game day performances around the holiday season; and 3) Bills apparel for other special events, including the unveiling of the Bills new uniforms in 2011.

2) Travel Expenses

109. The Jills were regularly required to travel to out of town destinations for appearances, including the Buffalo Bills training camp in Rochester, New York, and Turning Stone Resort in Syracuse, New York. The Bills Defendants failed to compensate Jills for all of their time spent traveling, or for travel expenses such as fuel and hotel accommodations.

110. While Defendant Buffalo Bills sent a film crew to Siesta Key Florida to cover the Jills calendar shoot, members of the Jills who participated in those and other calendar shoots in exotic locales were required to pay their own airfare, accommodations and other expenses.

111. Certain travel expenses were reimbursed. Upon information and belief, the Jills travel expenses were reimbursed directly by Defendant Buffalo Bills in some instances.

B. The Jills' Code Of Conduct And Other Workplace Restrictions

a. The Code of Conduct

112. During the Class period, Jills were issued a code of conduct which listed many of the stringent workplace rules.

113. Both Performing and Ambassador Jills were subject to the same Code of Conduct and other workplace restrictions.

114. The Code of Conduct exemplifies the extraordinary level of control exercised over the Jills by their employers, which is inconsistent with an independent contractor relationship. The Code of Conduct includes many of the onerous provisions that the NFLCA fought to overturn.

115. The Code of Conduct misclassified the Jills as volunteers/independent contractors as though the two classifications were the same thing.

116. In addition, the 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.

117. The Code of Conduct contains strict attendance and punctuality requirements. Violation of these requirements will result in varying levels of punishment including being benched for a subsequent Bills game.

118. The Code of Conduct restricts the Jills' ability to fraternize with Defendant Buffalo Bills' employees including team players and staff. The Jills are only permitted to fraternize with these employees at appearances and team functions. The Code of Conduct prohibits "conduct unbecoming a Jill" which may result in suspension, dismissal or "accruance of lates or misses." Conduct unbecoming a Jill includes: participation in any fashion shows, events, commercials advertisements without prior approval; posting on distasteful blogs; fighting; or "anything at anytime that is 'unbecoming of a Jill.'" This includes conduct when the Jill is not in uniform.

119. "Conduct unbecoming a Jill" was also a basis for discipline in the 1994-1995 Jills rules and regulations, long before Defendants Citadel, Mateczun and Stejon managed the Jills. Indeed, the only defendants associated with the Jills at that time were Defendants Buffalo Bills and the NFL.

120. The Code of Conduct provides that the Jills would receive one game ticket for a guest, and one parking pass for themselves for working the game. This is the same compensation scheme created by Defendant Buffalo Bills before it attempted to outsource its liability to licensees. This compensation scheme has been in effect almost continuously for the entire forty-seven years history of the Buffalo Jills.

121. The Code of Conduct listed numerous infractions that would result in

management's revocation of parking passes and game tickets, including violation of the Code of Conduct, or "disruptive behavior."

122. Through the Code of Conduct the Bills Defendants extended their control to associates of the Jills. Indeed, the Code of Conduct warned the Jills to "choose your guests wisely," because a Jill could lose ticket privileges if the guest who received the ticket misbehaved at any Jills event or "anytime your identity is known as a Buffalo Jill." The Code of Conduct reads: "any misuse of the game/parking ticket privilege by you or the person you issue it to may result in loss of ticket privileges."

123. Code of Conduct designated the appropriate attire for practices and prohibited the Jills from chewing gum or wearing glasses or hats at practices.

124. The Code of Conduct required that no part of the Jills' uniform could be worn to and from games without Defendant Mateczun's approval.

125. Code of Conduct prohibits the Jills from providing coaching or choreography to members of the Junior Jills Program outside of the sanctioned Junior Jills events.

126. During the class period, the Jills were also required by their employers to satisfy a list of "Glamour Requirements," which included additional workplace restrictions placed on the Jills. For instance, the Glamour Requirements provided that Jills would be charged with a lateness if they appeared unprepared for oral presentations.

127. The Jills were also subjected to severe restrictions by their employers with respect to "General hygiene and lady body maintenance" that are inconsistent with an independent contractor relationship. These restrictions include the following:

a) Prohibition on the use of loofahs or sponges;

b) "ALWAYS shower after a workout and change your undergarments;"

c) "Intimate Areas: Never use a deodorant or chemically enhanced product"; and

d) "When menstruating, use a product that right for your menstrual flow. … Products should be changed at least every 4 hrs. Except when sleeping, they can be left in for the night."

128. The Jills were also subject to behavioral restrictions during personal appearances, including the following:

a) "Always follow lead or experienced Jills without argument;"

b) "Do not be overly opinionated about anything;"

c) "Never debate politics, religion or any other sensitive issues during dinner;"

d) "Be positive and consistently optimistic about everything. Yourself, other Jills, the Bills' sponsors, etc. Never complain!;"

e) "Never eat in uniform unless arrangements have been made in advance" and

f) "Never say 'Oh no we're not allowed to eat.'"

129. The Jills were also subject to other restrictions concerning how they should respond to certain questions, how much they should tip service staff, and how they should eat soup and use a napkin.

130. The Jills were subject to severe limitations on their appearance.

131. The Code of Conduct notes that "[a]ltering or updating make-up or hairstyles may be required. Introductory gym, hair and makeup consultations will be scheduled for each squad member. No one is exempt from said consultations."

132. The Code of Conduct further provides: "You will be given a specific look to maintain for your hair and make up. Any changes in designated look such as hair color or style

are grounds for being benched or dismissed. … The Director must approve any change in hair color or style PRIOR to it being done." (Emphasis in original.)

133. The Jills were subject to physique evaluations during which their employers scrutinized the Jills' bodies and conformity to the Jills' hair, makeup and nails restrictions. The Code of Conduct provides that "a visual evaluation will be made the Tuesday prior to every home game by Jills management. This physique evaluation is the deciding factor as to whether a Jill may perform or appear at that particular game. Numerous evaluation 'misses' may result in suspension."

134. At these evaluations, the Jills were required to perform jumping jacks while their employers evaluated their stomach, legs, hips, and buttocks, on a check sheet. Management referred to this as the "jiggle test."

135. Jills that failed the jiggle test and other physical standard received a warning and in some cases were subject to suspension, dismissal or other penalties.

b. Social Media Policing

136. Jills management restricted the content of the Jills personal social media accounts.

137. At their orientation meetings, incoming Jills were warned that their social media activity would be monitored by management and content deemed improper could result in discipline. In an email to the Jills following the 2013 orientation meeting, Defendant Mateczun wrote the following to the squad:

> Social Media- Hopefully we sent a clear message last night. Please take some time this week to clean up your pages. There will be a no tolerance penalty very soon for distasteful postings.

138. In an email to the Jills following the 2012 orientation meeting, Defendant

Mateczun wrote the following to the squad:

> Clean up your Face Books, your friends photos on THEIR Face Books and anything else in poor taste that may be out there. Also, there should be NO reference to you being a Jill or an NFL Cheerleader on your FB. That means, delete comments that friends post on your wall as well. ASAP. We have sent a clear message on what is not acceptable. If you are consistently negligent with this, you will be dismissed. THINK GRANDMA OVER YOUR SHOULDER! :)

C. **The Jills Are Not Independent Contractors**

139. The Jills are not and never were independent contractors. The workplace conditions satisfy many of the indicia of employee, and do not support an independent contractor classification.

140. Indeed, the job responsibilities, compensation and strict workplace controls have changed little since 1995 when the NRLB determined that the Jills had clearly been misclassified as independent contractors.

141. The Jills were required to follow the explicit instructions regarding the performance of their duties, their demeanor, and their appearance. Workers who are required to comply with others' instructions about when where and how they are to work are ordinarily employees.

142. Training workers indicates that employers exercise control over the means by which results are accomplished. The Performing Jills were required to participate as a unit for more than one-hundred fifty hours of training leading up to their first on field performance as Buffalo Bills cheerleaders . In addition, all of the Jills received extensive training in obtaining and maintaining the "Jills look," etiquette, hygiene and the performance of their duties.

143. The operations of the Jills were integrated into the promotion of the Buffalo Bills. The Jills had performed for forty-seven years on the field in support of the Bills. Moreover, the Bills website contain more than a thousand photographs of the Jills along with

dozens of videos. Moreover, Defendant Stejon exists for the sole purpose of managing the Jills and Defendant Mateczun has managed the Jills exclusively for more than a decade.

144. The Jills rendered their services personally. They were not permitted to substitute other qualified workers who were not members of the Jills to perform their work. If services must be rendered personally, employers control both the means and the results of the work.

145. Jills assistants including Jills Coordinator Nichole Ranney and Jills Choreographer, Kelli Wagner were hired by three or more of the Defendants. Control is exercised if employers hire, supervise, and pay assistants.

146. The Jills maintained a continuing relationship with the squad. They were not hired on a per performance basis. All practices and game day performances and numerous personal appearances were mandatory. Continuing relationships between workers and employers indicate that employer-employee relationships exist.

147. The Jills did not set their own hours for work, including hours for game day performances, practices and mandatory appearances. The establishment of set hours of work by employers indicates control.

148. Much of the Bills work including game day performances and practices was performed on Defendant Buffalo Bills' premises at the Buffalo Bills fieldhouse and at Roger Wilson Stadium. Control is indicated if the work is performed on employers' premises.

149. The Jills were not permitted to choose their own patterns of work. The Jills work patterns were tightly. Moreover, every move of the Performing Jills choreographed cheerleading routines were dictated to them. Control is indicated if workers are not free to choose their own patterns of work but must perform services in the sequences set by the

employers.

150. The Bills Defendants paid for some but not all of the Jills business and travel expenses. Employers paying workers' expenses of this nature shows that employer employee relationships usually exist.

151. The Bills defendants furnished tools and materials to the Jills. For example, Defendant Buffalo Bills furnished pink pom poms, santa suits and Bills apparel to the Jills to be used in connection with the Jills work. If employers furnish significant tools, materials, and other equipment, employer-employee relationships usually exist.

152. The Jills had limited control over their ability to earn profits or losses. Much of the work they provided was mandatory and unpaid. Workers who can realize profits or losses (in addition to profits or losses ordinarily realized by employees) they are independent contractors. Workers who cannot are generally employees.

153. The Jills were not permitted to provide cheerleading services to other squads. Working for another cheerleading squad was deemed by management to be a conflict of interest. Moreover, when Defendant Buffalo Bills did not like the type of work one of the Jills performed for a third party, it instructed Stejon to discipline her.

154. Similarly, the Jills were not permitted to perform cheerleading services to the general public without authorization.

155. The Jills were subject to discharge for minor infractions of the strict workplace rules. The right of employers to discharge workers indicates that the workers are employees.

156. The Jills were permitted to quit the squad at any time without incurring additional liability. Workers are employees if they have the right to end their relationships with their principals at any time without incurring liability.

D. Defendant Buffalo Bills Is The Jills' Joint Employer

157. At all relevant times, Defendant Buffalo Bills was a joint employer of the Jills along with Defendants Mateczun and Stejon or Citadel. Defendant Buffalo Bills exerted a level of control over the Jills indicative of a joint employer relationship.

158. Defendant Mateczun admits that Defendant Buffalo Bills engaged in a subterfuge to disguise its true employer relationship to the Jills and that the Bills were in control of the Jills behind the scenes.

159. Defendant Buffalo Bills required as a condition of its agreements with Citadel that Citadel have each of the Jills execute waiver and releases misclassifying the Jills as independent contractors and providing that the Jills would not be paid for working Buffalo Bills games.

160. Similarly, Defendant Buffalo Bills required Stejon to have each of the Jills execute waivers and release forms "as a condition to participating as a member of the Cheerleading Team." Stejon was also required to promptly return those executed releases to Defendant Buffalo Bills.

161. Defendant Buffalo Bills required that Citadel and Stejon promptly return the respective waivers and releases executed by the Jills to Defendant Buffalo Bills at least two weeks before the first preseason home game.

162. Agreements between Defendants Buffalo Bills and Citadel also provide that "all operating procedures and policies are subject to the reasonable approval of the Bill in accordance with past practices"; "performances shall be in strict compliance with the logistical criteria provided by the Bills"; and provide the Bills with an opportunity to approve the uniform designs and commercial endorsements. Moreover, Defendant Buffalo Bills even quantified the amount

of unpaid labor that they expected from the Jills, requiring that they be provided with 200 work hours per year by the Jills for social and civil functions.

163. Defendant Buffalo Bills' agreements with Defendant Stejon provides that Defendant Buffalo Bills is entitled to 50% of the Net Revenues of Stejon above a certain threshold. Thus, above those thresholds, Defendant Buffalo Bills were entitled to half of every dollar that Defendants Mateczun and Stejon failed to pay the Jills.

164. Defendant Buffalo Bills maintained authority to control and supervise the Jills' work. Defendant Buffalo Bills employee Gretchen Geitter attended numerous practices and worked with the Jills choreographer to make real time changes to the Jills routine as they practiced the Jills performed them. Moreover, according to Defendant Mateczun, Defendant Buffalo Bills instructed her to discipline employees that it felt were not acting appropriately.

165. The Jills have been an integral part of the game day experience at Buffalo Bills home games for forty-seven years. The hundred fifty plus hours of unpaid practice ensure that the Jills are ready for their unpaid performances in support of the Buffalo Bills at those home games.

166. The Buffalo Bills annual yearbook has provided that "Jills Director, Stephanie Mateczun along with Coordinator, Nichole Ranney and Choreographer, Kelli Wagner, hold Jills practices two times a week to ensure the Jills are in top shape for numerous weekly appearances, events and of course home games, including those in Toronto!"

167. Moreover, every personal appearance of the Jills serves the interest of Defendants Buffalo Bills and the NFL, promoting goodwill and support for the team and the league.

168. Defendant Buffalo Bills participated in the selection of members of the Jills.

During the Class Period, Defendant Buffalo Bills employees, including several Bills players, have served as judges at the Jills tryouts.

169. Defendant Buffalo Bills exploited the Jills' unpaid modeling services to attract traffic to its website. The website also features more than a thousand photographs and dozens of videos of the Jills performing and modeling. To view the videos, visitors to Defendant Buffalo Bills website are required to first view commercial advertisements for Defendant Buffalo Bills or Bills sponsors. Defendant Buffalo Bills has also premiered the winners of the Jills tryout and the winner of the Jills calendar cover contest. Moreover Defendant Buffalo Bills earned revenue from its sale of Buffalo Jills swimsuit calendars created with the Jills unpaid labor.

170. Similarly, Defendant Buffalo Bills exploits the unpaid cheerleading instruction provided by the Jills to maintain its family friendly image by promoting the Junior Jills program on its website and attracting families to its annual Kids Day game at which the Junior Jills perform.

171. Defendant Buffalo Bills provided the premises in which the Jills performed their primary work functions. They provided the stadium and locker rooms for the Jills' unpaid game day performances, and the Buffalo Bills fieldhouse for unpaid practices. Moreover, Defendant Buffalo Bills provided the parking area and skyboxes, where the Ambassador Jills were required to promote the Bills.

172. Defendant Buffalo Bills provided the Jills with transportation and lodging to distant events, including an annual "home" game in Toronto, Canada.

173. Defendant Buffalo Bills provided the game tickets and game day parking passes for the Jills.

174. Though the Jills were required to pay for their own standard uniforms, Defendant

Buffalo Bills provided many of the costumes that the Jills were required to wear at special performances, including Santa outfits. Moreover, Defendants Buffalo Bills required the Jills to wear those outfits at specific holiday games and/or events. Defendant Buffalo Bills also paid $7,500 to supplement the cost of new uniforms when the Bills made changes the Jills' required uniforms.

175. Defendant Buffalo Bills expressly required the Jills to support the Buffalo Bills sponsors. For example, according to Defendant Mateczun, Defendant Buffalo Bills required the Jills to wear jewelry created by Defendant Buffalo Bills' sponsor Alex and Ani and to cheer in a specific manner that would show off the bracelet as part of the Buffalo Bills' sponsorship agreement with Alex and Ani.

176. Alex and Ani is a sponsor of all NFL teams. The aforementioned article features a photograph of a member of the Jills modeling the Alex and Ani Bills jewelry. Moreover, Alex and Ani uses photos of the Buffalo Jills' unpaid modeling services on its website in promotion of its NFL line. *See e.g.*, http://www.alexandani.com/blog/alex-and-ani-gifts-buffalo-bills-cheerleaders/ (last visited August 26, 2014).

177. While nominal management responsibilities were passed from one employer to another without materials changes, the Jills' responsibilities with respect to their joint employer, Defendant Buffalo Bills, remained constant for forty-seven years. Licensee after licensee came and went without material changes to the Jills' employment conditions.

178. Indeed, in connection with the transition from Citadel to Stejon, Defendant Mateczun informed the Jills that their working conditions under Stejon would not be much different than they were under Citadel.

E. <u>Defendant Buffalo Bills' 47-Year Tradition Of Wage Theft</u>

179. The incredible history of rampant wage theft, revolution and suppression in the history of the Buffalo Jills, a history undoubtedly known to each defendant, makes abundantly clear that the Bills' Defendants' labor law violations and the NFL's approval and support of those violations were at all times willful and malicious.

Indeed, Defendant Buffalo Bills has a 47-year long tradition of failing to properly compensate its cheerleaders and ensuring that others do not pay them properly either.

a. 1967-1986: Defendant Buffalo Bills Directly Employ the Jills

180. The Buffalo Jills cheerleader squad was established in 1967 and for nearly twenty years they were unpaid employees of Defendant Buffalo Bills. The Jills worked long hours at Buffalo Bills home games, squad practices, and numerous other services performed for the benefit of Defendant NFL and their employer Defendant Buffalo Bills, including personal appearances to promote the team.

181. Also in 1967, Defendant Buffalo Bills created the illegal compensation system for the Jills that remained in place almost continuously for forty-seven years. The Jills received no compensation for the vast majority of their work. Instead, Defendant Buffalo Bills gave them a ticket to the game and a parking pass. Nearly three decades later, licensee Andre Gerovac defended the tradition of wage theft established by the Bills, noting that "for the last 28 years, the cheerleaders volunteered their time and in return received a game ticket for a friend, a parking pass and the chance to perform in front of tens of thousands of people."

182. In 1985 Defendant Mateczun first became a member of the Jills. Along with the other Jills on her squad, Mateczun was subject to Defendant Buffalo Bills' misclassification and illegal compensation scheme.

b. 1986-1995: Defendant Buffalo Bills Outsource Their Liability to Andrew Gerovac

183. Beginning in 1986 and continuing until the 2014 lockout with only a brief interruption, Defendant Buffalo Bills implemented a "hot potato" scheme to outsource the license for the Jills' trademark, nominal management of the Jills squad and potential liability for the illegal compensation policy that it created.

184. Pursuant to this scheme, Defendant Buffalo Bills passed the Jills around like a hot potato from one licensee to another. Each licensee acted as a stooge for Defendant Buffalo Bills and a buffer between the Buffalo Jills and their employer the Buffalo Bills.

185. Defendant Buffalo Bills' first stooge was Mr. Gerovac, the owner of Bills' sponsor, Mighty Taco.

186. Upon information and belief, Mr. Gerovac had never managed a cheerleading squad before assuming management responsibilities for the Jills in 1986.

187. Under Gerovac, through various corporate entities, the Jills were not paid for performance at Buffalo Bills home games. For the Jills' work at home games and practices, they were provided with a parking pass and a ticket to the game, but received no wages in accordance with the illegal compensation policy devised by Defendant Buffalo Bills.

188. From 1986-1991, Defendant Mateczun continued to work as a member of the Jills and continued to be subject to the illegal compensation scheme created by Defendant Buffalo Bills.

189. In 1994, the Jills complained of unfair 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; and 4) were required

to purchase $150 "worth of posters" (rather than calendars) of the Jills squad on behalf of the corporate sponsor and were required to sell those posters on their own time. Moreover, the Jills were prohibited from engaging in conduct "unbecoming 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 rules and regulations, including strict attendance and punctuality requirements, 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.

190. Several members of the Jills filed a petition for Certification of Representation with the NLRB seeking the right to form a union. Their grievances at the time included the fact that they received no cash compensation for the long hours they spent working at Buffalo Bills home games.

191. The petition was vehemently opposed by Gerovac, who argued that the Jills' work was voluntary and that the Jills were independent contractors rather than employees.

192. On January 27, 1995, the NLRB issued a Decision and Direction of Election ("DDE") 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 DDE reads, in part:

> ***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.

(Emphasis added.)

193. In the DDE, the NLRB also granted the Jills the right to vote to form a labor union.

194. In February 1995, the members of the Jills voted overwhelmingly (29-2) in favor of forming the NFLCA, the first and only NFL cheerleaders labor union. 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."

195. The story of the Jills' ascension made national headlines, including reports and editorials in the Associated Press, the Wall Street Journal, the Washington Post, USA Today and the Los Angeles Times to name a few.

196. For the first time in Jills' history, the unionized Jills received cash compensation for working the Buffalo Bills games.

197. The members of the Jills aspired to encourage other NFL cheerleaders to join the NFLCA and improve working conditions for all NFL cheerleaders.

198. At or around that time, the NFLCA affiliated itself with a strong labor union, the International Brotherhood of Electrical Workers (the "IBEW").

c. The 1995 Jills Lockout

199. In March 1995, the NFLCA filed a grievance against Gerovac with the NLRB alleging that Gerovac retaliated against the Jills in response to their formation of the union. The grievance alleged that Gerovac cancelled all of the Jills' paid personal appearances and excluded them from tryouts for the upcoming cheerleading season.

200. Rather than resolve this grievance, Gerovac promptly dumped the Jills, citing financial costs, including an estimated $42,000 a year that he would be required to pay in wages to the Jills. At the time, Gerovac said, "I've had enough, I'm not going to sit by and lose a lot of money."

201. During this time, Defendant Buffalo Bills stood on the sidelines and watched Gerovac take the heat for the compensation scheme that it created.

d. 1995-1996: Defendant Buffalo Bills Make It Impossible For New Sponsors To Do The Right Thing

202. In 1995, Defendant Buffalo Bills passed the hot potato on to a company called Bradford Travel and executed a licensing agreement permitting Bradford Travel to manage operations of the Jills. Bradford Travel attempted to do the right thing and pay the Jills for their work performing at Defendant Buffalo Bills home games. According to one contemporaneous news report, "the unionized Jills were paid $40 each per game, the first time they had been compensated for cheering."

203. In 1996, Defendant Mateczun rejoined the Jills for one year. Upon information and belief, Defendant Mateczun was a member of the NFLCA in 1996.

204. Because of the licensing terms demanded by Defendant Buffalo Bills, the Jills' victory was short-lived. The licensing arrangement was not economically viable. Bradford Travel reportedly lost $100,000 and discontinued its management of the Jills after only one season. The Jills were left with no sponsor.

205. Later in 1996, Nick Gugliuzza, a local businessman, attempted to come in as a white knight to keep the Jills afloat by executing a licensing agreement with Defendant Buffalo Bills. Gugliuzza was willing to recognize the union, however, he reported that the terms demanded by Defendant Buffalo Bills made it economically impossible to come to an agreement

that would also allow him to compensate the Jills. He noted, "last year's sponsor lost $100,000. There has to be a way to recoup the expenses. The Bills and Jills are asking for too much for a sponsor." Mr. Gugliuzza passed on the deal and the Jills were left without a sponsor.

206. At that time, the NFLCA announced that it was breaking ties with the IBEW.

207. Defendant Buffalo Bills' attorney Vincent Tobia presciently predicted that the Jills would soon have another sponsor. Mr. Tobia did not disclose the hefty price that the Jills would be required pay in order to obtain a new sponsor.

e. August – September 1996: Defendant Buffalo Bills Set Aside The Subterfuge And Knowingly Misclassify The Jills As Unpaid Independent Contractors

208. In late 1996, Defendant Buffalo Bills retained the Jills to work without pay for two preseason and one regular season Buffalo Bills home games under the pretext that the Jills were independent contractors.

209. Defendant Buffalo Bills knew that this arrangement was illegal because it and the NFL were aware that the NRLB had previously determined that the Jills were employees rather than independent contractors.

210. Defendant Buffalo Bills resorted to this practice because it could not find a licensee that would agree to its financial terms, which left no money to pay the Jills in time for the start of the 1996 season.

f. September 1996-2001: Salvatore's Italian Gardens Becomes The Bills' Latest Stooge And Forces The Jills To Disband The Union

211. In September 1996, Defendant Buffalo Bills executed a three-year licensing arrangement with Salvatore's Italian Gardens Restaurant ("Salvatore's"). Thereafter, Salvatore's became the Jills' latest management group and Defendant Buffalo Bills' latest stooge.

212. Russell Salvatore is the owner of Salvatore's. For many years prior to his

sponsorship of the Jills, he had been closely associated with Defendant Buffalo Bills and hosted the annual Buffalo Bills Invasion Party in the Miami, Florida area.

213. Currently, when Defendant Buffalo Bills are a few thousand tickets short of selling out a home game, Mr. Salvatore is permitted to purchase thousands of tickets for a fraction of their value in order to allow Defendant Buffalo Bills to avoid a television blackout and to personally obtain substantial publicity as a hero to Bills fans. Everyone else pays full price.

214. Upon information and belief, Salvatore's had never managed a cheerleading squad before becoming the manager of the Jills and has not managed one since.

215. As a condition of accepting management by Salvatore's, the Jills were required to disband the NFLCA and give up hope of being paid for the Buffalo Bills home games. It was reported at the time that, "the Jills, who made national headlines in 1995 when they became the first cheerleaders in the NFL to unionize, won't be wearing the union label. In return for Salvatore's support they agreed to dissolve the NFL Cheerleaders Association."

216. At the time of the announcements, Defendant Buffalo Bills' attorney Mr. Tobia, who negotiated the licensing agreement with Salvatore's, told the Buffalo News that the Bills were "pleased with the outcome."

217. Thereafter, all of the gains made by the historic NFLCA were negated and the illegal compensation scheme created by Defendants Buffalo Bills was reinstated. With its close associate managing the Jills, Defendant Buffalo Bills continued to exploit the Jills for their unpaid labor while deflecting liability to its latest stooge.

218. During the period of time during covering the NRLB ruling, the ascension of the NFLCA, and the eventual destruction of the union, Commissioner Goodell served as a high level

executive with the NFL.

219. Upon information and belief, the NFL and Commissioner Goodell were well aware of the illegal acts of Defendant Buffalo Bills and the threat to the NFL's status quo created by the success of a new labor union seeking to represent all NFL cheerleaders.

g. 2001 – 2011: Defendant Buffalo Bills Passes The Hot Potato On To Defendant Citadel

220. In approximately early 2001, Defendant Citadel acquired WGRF Rock 97 and became closely associated with Defendant Buffalo Bills as the owner of the "flagship station of the Buffalo Bills Radio Network."

221. On January 8, 2001, Defendant Buffalo Bills executed a Jills licensing and broadcasting agreement with Citadel. Thereafter, Citadel became the Jills' latest management group and Defendant Buffalo Bills' latest stooge.

222. Upon information and belief, Citadel has never managed any other cheerleading squad. The management of a cheerleading squad is outside of Citadel's business model of radio broadcasting.

223. Defendant Citadel continued the illegal misclassification of the Jills and the illegal compensation scheme devised by Defendant Buffalo Bills.

224. In 2002, Defendant Mateczun was hired by Citadel to manage the Jills and commenced her participation in the hot potato scheme.

225. Also in 2002, Mateczun created the Jills Ambassador squad to meet the demands for public appearances and have more workers to service Defendant Buffalo Bills during home games.

226. In the summer of 2007, Defendant Buffalo Bills entered its third Jills licensing and Buffalo Bills radio broadcast agreement with Citadel (the "2007 Citadel Agreement").

227. In the summer of 2009, Defendant Buffalo Bills entered its fourth and final Jills licensing and Buffalo Bills radio broadcast agreement with Citadel (the "2009 Citadel Agreement," together with the 2007 Citadel Agreement, the "Citadel Agreements"). Pursuant to the terms of the Citadel Agreements, Defendant Buffalo Bills required Citadel to have each of the Jills execute a waiver and release misclassifying them as independent contractors rather than employees and further required Citadel to promptly deliver those waiver and release forms to Defendant Buffalo Bills.

228. Specifically, the waiver and release form in the 2009 Citadel Agreement defines the Jills as "Contractors," and provides that: "Contractor shall not be considered an employee or agent of Citadel" … "Nothing in this agreement shall be construed to create an employer/employee relationship" … "Contractor's relationship to Citadel shall at all times be that of an independent contractor" and "***Contractor will not receive payment for appearances at Buffalo Bills football games***." (Emphasis added.)

229. At the time that the Citadel Agreements were executed, Defendants Citadel, Mateczun, Buffalo Bills and the NFL knew that the agreement required the illegal misclassification of the Jills as independent contractors rather than employees. These Defendants were well aware that the NLRB had determined that the Jills were properly classified as employees rather than independent contractors.

230. These Defendants were also aware of the existence of NFLCA, the successful attempts to destroy the union and the return of the unlawful status quo developed by Defendant Buffalo Bills.

231. The Citadel Agreements were personally approved by Commissioner Goodell and a literal rubber stamp of his signature was affixed to the agreements.

232. An NFL spokesman said it's up to the teams to choose whether or not to have cheerleaders and the league itself is not involved in the selection or compensation of the squads. But this statement is proven false by the 2009 Citadel Agreement.

233. For about a decade with the assistance of Defendant NFL, Defendants Citadel, Mateczun and the Buffalo Bills continued the subterfuge, misclassified the Jills as independent contractors and failed to pay them for all hours worked.

234. The 2009 Citadel Agreement expired in late 2011, at or around the time that Citadel merged with Cumulus Media and changed its name to Cumulus Radio Corporation in a transaction valued at $2.4 billion.

235. At that time Defendant Citadel ended its close association with Defendant Buffalo Bills. It dropped the Buffalo Bills games from all of its stations and dropped the Jills like a hot potato.

h. January 2012-April 2014: Defendant Buffalo Bills Passes The Hot Potato On To Stejon

236. Upon information and belief, after the 2009 Citadel Agreement expired, Defendant Buffalo Bills approached Defendant Mateczun and encouraged her to form Defendant Stejon to execute a license agreement for the Jills trademark, and to become Defendant Buffalo Bills' latest stooge.

237. On December 30, 2011, Stejon was created by Defendant Mateczun for the purpose of managing the Jills.

238. In connection with the transition from Citadel to Stejon, Defendant Mateczun sent an email dated January 11, 2012 to current members of the Jills confirming that Defendant Buffalo Bills own the Jills and that their working conditions under Stejon would not be much different than they were under Citadel.

239. On February 20, 2012, Defendant Buffalo Bills entered into a two year license agreement with Stejon, which was signed by Defendant Mateczun and the Buffalo Bills' CEO, Russell H. Brandon. The parties executed a substantially similar licensing agreement on February 28, 2014 ("The Stejon Agreements").

240. The Stejon Agreements contain a provision similar to that in the Citadel Agreements by which Defendant Buffalo Bills required Stejon to have the Jills execute a waiver and release form and further required Stejon to promptly deliver those forms to Defendant Buffalo Bills.

241. The definition of "Net Revenue" in the Stejon Agreements contemplates payments to "independent contractors," but not to employees.

242. The waiver and release forms executed by the Jills working for Stejon misclassified the Jills as independent contractors.

243. The Stejon Agreements provide that Defendant Buffalo Bills is entitled to 50% of the Net Revenues of Stejon above a certain threshold. Thus, above those thresholds, Defendant Buffalo Bills were entitled to a substantial percentage of every dollar that Defendants Mateczun and Stejon fail to pay the Jills. The Stejon Agreements also provide for Defendant Buffalo Bills to receive 80% of Net Revenues for Jills sponsorship sales initiated or concluded by the Buffalo Bills.

244. In addition, the Stejon Agreements require Defendant Buffalo Bills to provide Defendant Stejon with the bulk of the so-called compensation to the Jills in the form of game tickets ("The Bills shall continue to provide fifty-one (51) tickets per home game to the Cheerleading Team.").

245. The Stejon Agreements also require Defendant Buffalo Bills to provide room

and board and transportation for the Jills in connection with certain offsite events.

F. NFL Cheerleader Lawsuits And The 2014 Jills Lockout

246. On January 22, 2014, Lacy T., a former member of the Oakland Raiderettes cheerleading squad, filed a class action complaint against her employer the Oakland Raiders for failure to pay minimum wage to her and her fellow Oakland Raiderettes cheerleaders.

247. In addition to the Lacy T. action, similar suits were filed against the Cincinnati Bengals, the New York Jets, and the Tampa Bay Buccaneers.

248. On January 30, 2014, an online petition was circulated demanding that the NFL team owners pay their cheerleaders a living wage. *See* http://www.change.org/p/roger-goodell-nfl-commissioner-petition-to-provide-nfl-cheerleaders-with-a-livable-salary. The petition currently has more than 140,000 signatures.

249. Soon after the Lacy T. action was filed, Defendant Mateczun attended an annual conference for NFL cheerleader directors. Following this conference, Defendant Mateczun claims to have approached Defendant Buffalo Bills' management about the lack of compensation to the Jills and explained that other teams in the league treated their cheerleaders as employees rather than independent contractors.

250. Mateczun claims that at her request, Defendant Buffalo Bills agreed to provide Stejon/Citadel with $50,000 of the $80,000 per year that she felt would be required to properly pay the Jills.

251. On April 22, 2014, the instant class action and *Jaclyn S. et al. v. Buffalo Bills, Inc. et al*, Index No. 804088/2014 (the "*Jaclyn S.* action") were commenced in this Court.

252. According to Mateczun, Defendant Buffalo Bills reneged on its agreement to supplement the cost of wages to the Jills because it would weaken their defense in litigation.

253. On April 24, 2014, two days after the initial Complaints in this action and *Jaclyn S.* action were filed, Defendants Mateczun, Stejon and Buffalo Bills implemented the 2014 Jills Lockout. Defendant Mateczun announced that Stejon was suspending all operations of the Jills in light of pending litigation.

254. The 2014 Jills Lockout comes straight out of the NFL's playbook. It is reminiscent of the lengths that the NFL will go to oppose collective action by workers. In 2011, the NFL locked out members of the NFL Players Association to force worker concessions and the following year, the NFL owners locked out the members of the NFL Referee's Association.

255. Shortly after Defendants Buffalo Bills, Mateczun and Stejon commenced the 2014 Lockout, 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, including Plaintiffs Alyssa U., Maria P and Melissa M. *See* http://buffalo-jills-alumni.vpweb.com (last visited November 5, 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."

256. Polito is the current non-elected Chairperson of the Board of Directors of the Buffalo Jills Alumni Association and was a 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.

257. Marino, who is a former cheerleading director of the Jills, stated that the lawsuits "ruined it for the rest of the girls."

258. 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.

259. Defendants Buffalo Bills, Mateczun and Stejon's ham-fisted efforts to stifle participation in the lawsuit and punish the current Jills for the courageous actions of their former members is disgracefully reminiscent of the union busting efforts of the Jills management between 1995 and 1996.

260. On May 7, 2014, Mateczun issued a statement exposing the Buffalo Bills' micromanagement of the Jills and blaming the Buffalo Bills for the 2014 Jills 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 November 2, 2014). *Id*. The statement was also posted on the Buffalo Jills' Website, www.buffalojills.com. 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."

261. 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.

262. 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.

263. 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."

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

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

266. 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' Code of Conduct, this year they were benched due to the 2014 Jills 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."

267. Though there were numerous other NFL cheerleader lawsuits filed, the Jills' operation was the only one to shut down.

268. In fact, the Raiders recently reached a tentative settlement in the Lacy T. case to pay $1.25 million in lost wages to cheerleaders who worked for the team over the last four seasons.

269. On August 24, 2014, the Buffalo Bills played their first preseason home game at Ralph Wilson Stadium against the Tampa Bay Buccaneers. Because of the lockout, for the first time in forty-seven years, the Jills were not on the field to the support their team.

G. <u>The Retaliatory Counterclaims</u>

270. After the *Ferrari* and *Jaclyn S.* actions were filed, Defendant Buffalo Bills moved to dismiss the Complaints against it based on its argument that it was not the Jills' joint employer.

271. The Court denied Defendant Buffalo Bills' motion to dismiss the claims against it in the *Jacyln S.* action on July 1, 2014, and on July 29, 2014 denied Defendant Buffalo Bills' motion in its entirety in the instant action. In the *Ferrari* decision, the Court noted:

> The minute control that Citadel and Stejon exercised over the work of the cheerleaders supports the conclusion that they were not independent contractors but employees. The Bills insisted that Citadel and Stejon obtain the agreement from each of the cheerleaders that they were independent contractors and the Bills directed that the agreement be returned promptly to them. These facts are further indications of the control the Bills exercised over the Jills cheerleaders despite the fact that they were in the nominal employment of the subcontractors.

Ferrari. v. Mateczun. et al., 2014 N.Y. Misc. LEXIS 3735 at *3-4 (N.Y. Sup. Ct. July 29, 2014).

272. Defendant Buffalo Bills subsequently filed an answer in the *Jaclyn S.* case which included a counterclaim against Plaintiffs Alyssa U., Maria P., and Melissa M.

273. Defendant Buffalo Bills also filed an answer in the *Ferrari* case which included a counterclaim against Plaintiff Ferrari and "certain class members," who were not identified. The two counterclaims are nearly identical and based on Plaintiffs' purported agreement to indemnify Defendant Buffalo Bills for liability in the lawsuits. Defendant Buffalo Bills now admits that it does not believe Plaintiffs ever signed any such such indemnification agreement.

274. The Counterclaim in the Ferrari action reads as follows:

> Upon information and belief, upon being selected solely by Defendant Mateczun, members of Plaintiff's Class executed a written contract with Third-Party Defendant Stejon Productions Corporation ("Stejon") that: (1) acknowledged that the Plaintiff was being retained by Stejon/Mateczun on an independent contractor basis; and (2) recited that the Plaintiff expressly agreed to indemnify and hold BBI, and others, harmless from any and all liabilities arising from Plaintiff's participation as a member of the cheerleading squads owned and operated by Stejon/Mateczun.
>
> In commencing this baseless action against Defendant BBI, Plaintiff has caused BBI to incur substantial damages, including: attorneys' fees and costs of suit herein, which said costs and fees shall only continue to accrue as this litigation continues, together with harm to BBI's reputation, goodwill and community standing.
>
> By reason of their express agreement to indemnify and hold BBI harmless, should Plaintiff successfully obtain certification of her purported class, then certain members of Plaintiff's purported class are liable to BBI for all such damages incurred by BBI in an amount to be proven at trial but believed to be in excess of $100,000, with lawful interest thereon.

275. By filing the Counterclaim, Defendant Buffalo Bills seeks to retaliate against the Plaintiffs and punish them for engaging in lawfully protected activity of filing their respective lawsuits.

276. Moreover, in the *Ferrari* action, Defendant sought to stifle participation of other class members by threatening them with liability in excess of $100,000 if they were to come

forward.

277. After Plaintiff Ferrari filed a motion to address the issues concerning the retaliatory counterclaim, Defendant Buffalo Bills withdrew the counterclaim, but only without prejudice.

278. Thus, Defendant Buffalo Bills' $100,000 threat to "certain class members" continues to linger and discourages potential class members from coming forward.

H. Plaintiffs' Experiences

a. Plaintiff Ferrari

279. Plaintiff Ferrari was employed by Defendants Mateczun, Citadel and Buffalo Bills. She served on the Buffalo Jills cheerleading squad from April 2009 until February 2010.

280. Plaintiff Ferrari 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.

281. At the commencement of her employment, Plaintiff Ferrari's employers required her to sign an agreement classifying her as an independent contractor. At the time, she did not know that the agreement was created by Defendant Buffalo Bills with the approval of the NFL. Moreover, she did not know that the contract was illegal, unenforceable and falsely represented the status of her employment.

282. Plaintiff Ferrari 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 in connection with each of these games.

283. Plaintiff Ferrari regularly attended bi-weekly 3.5 to 4 hour practices at the Buffalo Bills fieldhouse throughout the cheerleading season (April - December) for which she was not compensated.

284. Plaintiff Ferrari was required to participate in several Junior Jills program events providing professional cheerleading instruction to young girls without compensation.

285. Plaintiff Ferrari was required to make approximately twenty-five personal appearances as a Jill. 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 Ferrari was paid nothing.

286. Plaintiff Ferrari worked hundreds of hours for the benefit of the Bills Defendants, but was only paid approximately $200 for all of her work as a Jill.

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

288. The Bills Defendants did not consider the products and services provided to Plaintiff Ferrari as substitutes for cash wages. Bills Defendants never provided Plaintiff Ferrari 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.

289. Plaintiff Ferrari provided uncompensated modeling services to the Bills

Defendants for the 2010 NFL Buffalo Jills Swimsuit Calendar without compensation.

290. Plaintiff Ferrari 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 was not properly compensated for the hours that she spent trying to sell the calendars.

291. Plaintiff Ferrari 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.

292. Plaintiff Ferrari was required to solicit gift baskets from local business, but was not compensated for that time.

293. Plaintiff Ferrari worked more than ten hours in a single workday on at least two occasions, when she was transported by the Bills Defendants to the Bills Toronto Series and for the Hall of Fame Game in Canton, Ohio. She received no spread of hours premium pay and was not compensated at all for events requiring extended travel with the Jills.

294. Plaintiff Ferrari 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 the Bills Defendants including a turtleneck sweater and name tag during the course of her employment as a Jill. She was also required to purchase specific brands of hosiery. Plaintiff was not reimbursed for these expenses.

295. Some of the uniform parts and equipment used by Plaintiff Ferrari were provided by Defendant Buffalo Bills, including a Santa outfit worn by the Jills at games during the Christmas holiday season and pink poms in connection with the Bills and the NFL's breast cancer awareness month promotions.

296. Plaintiff Ferrari incurred unreimbursed travel expenses for many of the personal

appearances at which she was required to participate.

297. Plaintiff Ferrari was required to pay an audition fee of approximately $45 to try out for the Jills in 2009.

b. Plaintiff Alyssa U.

298. Plaintiff Alyssa U. was employed by Defendants Mateczun, Stejon and Buffalo Bills. She served on the Buffalo Jills cheerleading squad from April 2012 until approximately March 2013.

299. Though Plaintiff Alyssa U. was provided with a document titled, "History of the Jills," she 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.

300. At the commencement of Plaintiff Alyssa U.'s employment, she was required to sign an agreement classifying her as an independent contractor. At the time, she did not know that Defendant Buffalo Bills required Defendants Mateczun and Stejon to obtain a release from her. Moreover, she did not know that the agreement that she signed was illegal, unenforceable and falsely represented the status of her employment.

301. Plaintiff Alyssa U. was required to attend all of the Buffalo Bills home preseason and regular season games during the 2012-2013 season. In connection with each game, Plaintiff was required to arrive early and participate in pregame activities and drills. She worked approximately eight hours in connection with each of these games.

302. Plaintiff Alyssa U. regularly attended bi-weekly 3.5 to 4 hour practices throughout the cheerleading season for which she was not compensated.

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

304. Plaintiff Alyssa U. was required to make approximately twenty-six (26) personal appearances as a Jill. The vast majority of these personal appearances were unpaid.

305. Plaintiff Alyssa U. was paid $420.00 for all of her work as a Jill during the course of her employment.

306. Plaintiff Alyssa U. 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

307. Plaintiff Alyssa U. provided uncompensated modeling services to the Bills Defendants for the 2013 NFL Buffalo Jills Swimsuit Calendar and Defendant Buffalo Bills promotional videos without compensation.

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

309. Plaintiff Alyssa U. was required to purchase four tickets for the Buffalo Jills 2012 Golf Tournament at face value ($150.00 each) and spend time trying to sell those tickets at the same price.

310. Plaintiff Alyssa U. was required to spend time soliciting gift baskets from local business without compensation as part of her responsibilities as a Jill.

311. Plaintiff Alyssa U. 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 one occasion while working for Defendants Buffalo Bills, Mateczun and Stejon at a Bills Toronto Series game.

312. Plaintiff Alyssa U. was required to purchase and maintain her mandatory Buffalo Jills uniform. She was not reimbursed for the cost of the uniform.

313. Some of her uniform parts and equipment were provided by Defendant Buffalo Bills, including a Santa outfit worn by the Jills at games during the Christmas holiday season and pink poms in connection with the Bills and the NFL's breast cancer awareness month promotions.

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

315. Plaintiff Alyssa U. never received a notice of pay rates from her employers pursuant to the Wage Theft Prevention Act.

316. Plaintiff Alyssa U. was required to pay an audition fee of approximately $50 to try out for the Jills in 2012.

c. Plaintiff Maria P.

317. Plaintiff Maria P. was employed by Defendants Mateczun, Stejon and Buffalo Bills. She served on the Buffalo Jills cheerleading squad from April 2012 until approximately March 2013.

318. Plaintiff Maria P. 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.

319. At the commencement of Plaintiff Maria P.'s employment, she was required to sign an agreement classifying her as an independent contractor. At the time, she did not know

that Defendant Buffalo Bills required Defendants Mateczun and Stejon to obtain a release from her. Moreover, she did not know that the agreement that she signed was illegal, unenforceable and falsely represented the status of her employment.

320. Plaintiff Maria P. was required to attend all of the Buffalo Bills home preseason and regular season games during the 2012-2013 season. In connection with each game, Plaintiff was required to arrive early and participate in pregame activities and drills. She worked approximately eight hours in connection with each of these games.

321. Plaintiff Maria P. regularly attended bi-weekly 3.5 to 4 hour practices at the Buffalo Bills fieldhouse throughout the cheerleading season for which she was not compensated.

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

323. Plaintiff Maria P. was required to make approximately thirty-one (31) personal appearances during the 2012-2013 season. The vast majority of these personal appearances were unpaid.

324. Plaintiff Maria P. was paid $105 for all of her work as a Jills Cheerleader during the course of her employment.

325. Plaintiff Maria P. received one ticket to each Buffalo Bills home game. She was also not required to pay for parking in order to get to her job at the stadium. A game ticket, the use of a parking space necessary to get to work, and services provided by sponsors do not constitute wages under New York Labor Law, which requires payment of wages in cash or a cash equivalent.

326. Plaintiff Maria P. was required to provide modeling services for the 2013 NFL Buffalo Jills Swimsuit Calendar without compensation.

327. Plaintiff Maria P. was required to purchase her quota of calendars and spend time trying to sell them. She received no compensation from Defendants Buffalo Bills, Stejon, or Mateczun. She was unable to meet her calendar sales quota and lost money as a result.

328. Plaintiff Maria P. was required to purchase a quota of four tickets for the Buffalo Jills 2012 Golf Tournament at face value ($150.00 each) and spend time trying to sell those tickets at the same price. Plaintiff was also required to provide, solicit, or otherwise produce three gift baskets to be raffled off at the Golf Tournament.

329. Plaintiff Maria P. 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 one occasion while working for Defendants Stejon, Mateczun and Buffalo Bills at a Bills Toronto Series game.

330. Plaintiff Maria P. was required to purchase and maintain her mandatory Buffalo Jills uniform at a cost of $607.00. Plaintiff also spent $180.17 on a swimsuit for the purpose of modeling for defendants. She was not reimbursed for the cost of the uniform or the swimsuit.

331. Some of her uniform parts and equipment were provided by Defendant Buffalo Bills, including a Santa outfit worn by the Jills at games during the Christmas holiday season and pink poms in connection with the Bills and the NFL's breast cancer awareness month promotions.

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

333. Plaintiff Maria P. was required to pay an audition fee of approximately $50 to try out for the Jills in 2012.

334. Plaintiff Maria P. never received a notice of pay rates from her employers pursuant to the Wage Theft Prevention Act.

335. Plaintiff Maria P. was benched for "uniform violations" on two separate occasions: once during the Bills vs. Cardinals home game on October 14, 2012, and again during the Bills vs. Dolphins home game on November 15, 2012.

d. Plaintiff Melissa M.

336. Plaintiff Melissa M. was employed by Defendants Mateczun, Stejon and Buffalo Bills. as a Buffalo Jills cheerleader approximately April 2013 until approximately March 2014.

337. Plaintiff Melissa M. 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.

338. At the commencement of each season Plaintiff Melissa M. was required by her employers to sign an agreement classifying her as an independent contractor. At the time, she did not know Defendant Buffalo Bills required Mateczun and Stejon to have her sign a release. Moreover, she did not know that the agreement that she signed was illegal, unenforceable and falsely represented the status of her employment.

339. Plaintiff Melissa M. was required to attend all of the Buffalo Bills home preseason and regular season games during the 2013-2014 season. In connection with each game, Plaintiff was required to arrive early and participate in pregame activities and drills. She worked approximately eight hours in connection with each of these games.

340. Plaintiff Melissa M. regularly attended bi-weekly 3.5 to 4 hour practices throughout the season for which she was not compensated.

341. Plaintiff Melissa M. was required to participate in several Junior Jills program events providing professional cheerleading instruction to young girls without compensation.

342. Plaintiff Melissa M. was required to make approximately fourteen (14) personal appearances as a Jill. The vast majority of these personal appearances were unpaid.

343. Plaintiff Melissa M. was paid $210.00 for all of her work as a Jills during the course of her employment.

344. Plaintiff Melissa M. 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. However, her parking pass was revoked for one game for "having a bad attitude."

345. She never received any surgery provided by any of the Defendants or Bills corporate sponsors.

346. Plaintiff Melissa M. was required to provide modeling services to Defendants Buffalo Bills, Stejon and Mateczun for the 2013-2014 NFL Buffalo Jills Swimsuit Calendar without compensation.

347. Plaintiff Melissa M. 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 for the hours spent trying to sell the calendars.

348. Plaintiff Melissa M. was required to purchase a quota of four tickets for the Buffalo Jills 2012 Golf Tournament at face value ($150.00/ea.) and spend time trying to sell those tickets at the same price. Plaintiff was also required to provide, solicit, or otherwise produce three gift baskets to be raffled off at the Golf Tournament.

349. Plaintiff Melissa M. 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. Plaintiff worked more than ten hours in a single workday on at least three occasions while working for defendants: on June 11, 2013, for the Turning Stone Casino calendar photo shoot; on August 31, 2013, for the Calendar Release Party at Turning Stone; and on December 1, 2013 for the Bills Toronto Series game.

350. Plaintiff Melissa M. was required to purchase and maintain her mandatory Buffalo Jills uniform at a cost of $577.00. She was not reimbursed for the cost of the uniform.

351. Some of her uniform parts and equipment were provided by Defendant Buffalo Bills, including a Santa outfit worn by the Jills at games during the Christmas holiday season and pink poms in connection with the Bills and the NFL's breast cancer awareness month promotions.

352. Plaintiff Melissa M. incurred unreimbursed travel expenses for many of the personal appearances that she was required to make.

353. Plaintiff Melissa M. was required to pay an audition fee of approximately $50 to try out for the Jills each season.

354. Plaintiff Melissa M. never received a notice of pay rates from her employers pursuant to the Wage Theft Prevention Act.

355. As part of her employment with the Bills Defendants, Plaintiff Melissa M. was required to sell cookies for a breast cancer awareness fundraiser during a home game that took place on October 13, 2013. In carrying out this task, plaintiff took direction and instruction from an individual wearing a Buffalo Bills identification badge, and also submitted the cookie sales proceeds to the same individual.

356. On at least three occasions, plaintiff Melissa M. was able to and did purchase merchandise at the Buffalo Bills Store, located at Ralph Wilson Stadium, using the 40% Buffalo Bills employee discount.

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

357. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

358. This cause of action is brought against Defendants Mateczun, Citadel and Buffalo Bills for their conduct up to and including the time of their divestment of the Jills in approximately December 2011 and against Defendants Mateczun, Stejon and Buffalo Bills for their conduct from 2012 to the present.

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

360. Plaintiffs and Class members are not independent contractors, but are employees.

361. Plaintiffs are not exempt employees under any exemption of New York's minimum wage law.

362. The Bills Defendants failed to pay Plaintiffs 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.

363. Plaintiffs and the Class each worked hundreds of unpaid hours providing cheerleading performances, practices, personal appearances, modeling service, sales services, donation solicitation services and professional cheerleading instruction. Indeed, the Bills Defendants have represented to prospective members of the squad that "Jills do not get paid for

practices, game days or charity events."

364. The Bills 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 not paid the Jills for working Buffalo Bills home games.

365. Moreover, the Bills Defendants required Plaintiffs 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.

366. Due to the Bills Defendants' violations of the New York Labor Law, Plaintiffs and members of the Class are entitled to recover from the Bills 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.*

367. In light of Defendants Mateczun, Stejon 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. Plaintiffs and the Class also seek injunctive relief precluding Defendants Mateczun, Stejon 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 the Bills Defendants)

368. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

369. This cause of action is brought against Defendants Citadel, Mateczun and the Buffalo Bills up to and including the time of Citadel's divestment of the Jills in approximately December 2011 and against Defendants Mateczun, Stejon and Buffalo Bills thereafter.

370. 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."

371. 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."

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

373. Moreover, non-cash benefits provided to the Jills including parking privileges and game tickets, which do not constitute wages, were subject to revocation at the discretion of management.

374. Due to the Bills Defendants' violations of the New York Labor Law, Plaintiffs and the members of the Class are entitled to recover from the Bills Defendants the amounts that

they were required to pay to any of the Bills Defendants, reasonable attorneys' fees, costs and pre-judgment and post-judgment interest.

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

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

376. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

378. The Bills Defendants have failed to pay Plaintiffs 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.

379. Due to the Bills Defendants' violations of the New York Labor Law, Plaintiffs 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.

380. In light of Defendants Stejon, Mateczun's and Buffalo Bills longstanding and ongoing violations of New York Labor Law and applicable regulations, Plaintiffs and the Class

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

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

381. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

382. This cause of action is brought against Citadel, Mateczun and the Buffalo Bills up to and including the time of their divestment of the Jills in approximately December 2011 and against Defendants Mateczun, Stejon and Buffalo Bills thereafter.

383. The Bills Defendants regularly required Plaintiffs to work more than ten hours in a single workday. The Bills Defendants failed to pay Plaintiffs 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.

384. For example, during the Class Period, the Jills 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.

385. On these occasions, the Bills Defendants failed to pay Plaintiffs and other Class members spread of hours premium pay.

386. Due to the Bills Defendants' violations of the New York Labor Law, Plaintiffs 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.

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

FIFTH CAUSE OF ACTION
Violation of the Wage Theft Prevention Act
(As to defendants Buffalo Bills, Mateczun, and Stejon)

388. Plaintiffs repeat and reallege the previous allegations as if fully set forth herein.

389. Plaintiffs Alyssa U., Maria P., and Melissa M. bring this cause of action on behalf of themselves against defendants Buffalo Bills, Mateczun, and Stejon.

390. Since 2011, New York Labor Law § 195 has required defendants Buffalo Bills, Mateczun, and Stejon to provide the Jills with accurate notice of wage rates at the commencement of their employment and on an annual basis and to preserve those records for a period of six years. Those statements must include: Plaintiffs' rate or rates of pay, including overtime rate of pay; where applicable; how Plaintiffs are paid; and any allowances taken as part of the minimum wage.

391. Defendants Buffalo Bills, Mateczun, and Stejon are also required to provide regular wage statements to each of their employees on each payday.

392. Defendants Buffalo Bills, Mateczun, and Stejon failed to furnish wage rate notifications and wage statements in compliance with the Wage Theft Prevention Act.

393. Due to defendants Buffalo Bills, Mateczun, and Stejon's violation of New York State Law, Plaintiffs Alyssa U., Maria P., and Melissa M. are entitled to recover from defendants Buffalo Bills, Mateczun, and Stejon an award of statutory damages in the amount of $50 per Plaintiff per week, up to $2,500 for failure to provide wage rate notifications and damages in the amount of $100 per Plaintiff per week, up to $2,500 for failure to provide wage statements.

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

394. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

395. This cause of action is brought in the alternative to Plaintiff's First and Second Causes of Action on behalf of Plaintiffs and the members of the prospective Class.

396. This cause of action is brought against Defendants NFL, Buffalo Bills, Citadel and Mateczun for their conduct up to and including the time of their divestment of the Jills in approximately December 2011 and against Defendants NFL, Mateczun, Stejon and Buffalo Bills thereafter.

397. Plaintiffs and Class members performed valuable services for the benefit of all Defendants by performing on game days, attending practices, rehearsals, appearance and NFL special events.

398. All Defendants, by their policies and actions, benefited from, and increased their profits and personal compensation by failing to pay Plaintiffs and the Class all wages due for work performed.

399. All Defendants have accepted and received the benefits of the work performed by Plaintiffs and the Class at the expense of Plaintiffs and the Class.

400. Plaintiffs and the Class have no adequate remedy at law.

401. Defendant NFL approved agreements between Defendant Buffalo Bills and Citadel to classify Plaintiff Ferrari and the other member of the prospective Class as independent contractors rather than employees.

402. These agreements resulted in the illegal misclassification of the Jills and provided a pretext by which Plaintiffs and other members of the Class were deprived of wages

and monies otherwise properly paid to them.

403. It is inequitable and unjust for Defendants to reap the benefits of Plaintiff's and the Class's labor, and to charge them for expenses. Plaintiffs 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.

SEVENTH CAUSE OF ACTION
Quantum Meruit
(As to All Defendants)

404. Plaintiffs repeat, reallege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

405. This cause of action is brought in the alternative to Plaintiff's First and Second Causes of Action on behalf of themselves and the prospective Class.

406. Plaintiffs have no adequate remedy at law.

407. This cause of action is brought against the NFL, the Buffalo Bills, Citadel and Mateczun for their conduct up to and including the time of their divestment of the Jills in approximately December 2011 and against Defendants NFL, Mateczun, Stejon and Buffalo Bills thereafter.

408. Plaintiffs and Class members performed valuable services for the benefit of Defendants by performing on game days, attending practices, rehearsals, appearance and NFL special events.

409. Defendants requested that Plaintiffs and Class members render these valuable services and knowingly accepted the benefits of Plaintiffs' labor.

410. The Defendants' failure to compensate Plaintiffs and other Jills is unjust in that the Defendants enjoyed the value of those services and benefits provided by Plaintiffs' labor.

411. Plaintiffs and Class members expected compensation at the time services were

rendered to the Defendants, but for the Bills Defendants' improper and unlawful claims of exemption from payment for compensation of their services.

412. Defendant NFL approved agreements between Defendant Buffalo Bills and Citadel to misclassify Plaintiff Ferrari and the other member of the prospective Class.

413. These agreements resulted in the illegal misclassification of the Jills and provided a pretext by which Plaintiffs and other members of the Class were deprived of wages and monies otherwise properly paid to them.

414. The misclassification of Plaintiffs and the other members of the prospective Class was done pursuant to and in furtherance of the agreements between and among the Defendants.

415. Plaintiffs now seek interest, attorneys' costs and fees, and damages in the amount of the value of the services provided by them and their fellow members of the prospective Class.

EIGHTH CAUSE OF ACTION
COMMON LAW FRAUD
(As to the Bills Defendants)

416. Plaintiffs repeat, reallege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

417. The Bills Defendants falsely represented to Plaintiffs and other Class members that they were independent contractors rather than employees.

418. The misrepresentation was made at various times including in a waiver and release form that Defendant Buffalo Bills required other Bills Defendants to have Plaintiffs and other prospective Class members executed and return to Defendant Buffalo Bills.

419. The waiver and release form was approved by the NFL as a part of several contracts between Defendant Buffalo Bills and one or more of the other Bills Defendants,

including Defendant Citadel.

420. The Bills Defendants were aware that the representation was false.

421. Defendant Buffalo Bills owned the Jills in 1995 when the NLRB determined that the Jills were "clearly employees" rather than independent contractors.

422. Defendant Mateczun, who is the President of Defendant Stejon, was a member of the Jills while the squad was unionized as employees following the NLRB ruling.

423. Upon information and belief, Defendant Citadel was also aware that the Jills were being misclassified, because it is a large national media company, and the NLRB ruling was widely publicized in the national press.

424. Plaintiffs and other prospective Class members relied upon the Bills Defendants false representation concerning their employment status by accepting the fact that they would not be paid in accordance with the minimum wage law.

425. Plaintiffs and other prospective Class members were unaware that the NLRB had previously determined that the Jills were "clearly employees" or that as a matter of law, they were employees rather than independent contractors.

426. Plaintiffs and other prospective Class members suffered financial injury as a result of the fraud because they were hoodwinked into believing that they were not entitled to compensation for their labor.

NINTH CAUSE OF ACTION
AIDING AND ABETTING
(As to Defendants NFL and Buffalo Bills)

427. Plaintiffs repeat, reallege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

428. This cause of action is brought by Plaintiffs and the Class against Defendants Buffalo Bills and the NFL in the alternative to their primary liability on any of the foregoing

causes of action.

429. The Bills Defendants breached their duty to the Jills by fraudulently misclassifying them as independent contractors, failing to pay them minimum wage, unjustly enriching themselves at the Jill' expense and receiving the benefits of the Jills work entitling Plaintiffs and the Class to be paid for the value of their services.

430. Defendants Buffalo Bills and the NFL had express knowledge of these violations and breaches of duty to the Jills by the Bills Defendants.

431. Defendants Buffalo Bills and the NFL were aware that the Jills were employees rather than independent contractors.

432. Defendants Buffalo Bills and the NFL were aware that the NLRB had determined that the Jills were clearly employees and not independent contractors.

433. Defendant Buffalo Bills provided substantial assistance and encouragement to other Bills Defendants. It required the other Bills Defendants to ensure that the Jills sign waiver and release documents which misclassified them as independent contractors and provided that the Jills would not be paid for working Buffalo Bills games.

434. Defendant Buffalo Bills' conduct was a proximate cause of the harm caused to Plaintiffs and the Jills, because Defendant Buffalo Bills required the other Bills Defendants to misclassify the Jills.

435. Defendant NFL provided substantial assistance to the Bills Defendants. Defendant NFL approved and rubber stamped the Bills Defendants' misclassification of the Jills.

436. Defendant NFL's conduct was a proximate cause of the harm caused to Plaintiffs and the Jills, because upon information and belief, NFL approval was required for the contracts which misclassified the Jills, and which were rubber stamped by the NFL.

TENTH CAUSE OF ACTION
RETALIATION
(As to Defendant Buffalo Bills)

437. Plaintiffs repeat, reallege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

438. This cause of action is brought by Plaintiffs and the Class against Defendant Buffalo Bills.

439. New York Labor Law § 215 prohibits an employer from retaliating against workers who exercise their rights under the New York Labor Law.

440. Plaintiffs' filing of lawsuits against Defendant Buffalo Bills seeking payment under the labor law are protected activities under New York Labor Law § 215.

441. By filing Counterclaims against Plaintiffs and certain class members, Defendant Buffalo Bills has retaliated against them, discriminated against them and penalized them in violation of New York Labor Law § 215.

442. Defendant Buffalo Bills brought the Counterclaims against Plaintiffs and other class members to harass and intimidate Plaintiffs and to otherwise interfere with Plaintiffs' attempts to vindicate their rights under the New York Labor Law.

443. Plaintiffs have suffered damages including harm to their reputations, legal costs, and delay as a result of Defendants Buffalo Bill's retaliation.

444. Notices of Plaintiffs' retaliation claims have been served upon the Attorney General, pursuant to New York Labor Law § 215(2).

445. Plaintiffs and other class members are entitled to equitable relief, monetary relief including but not limited to compensatory, reasonable attorneys' fees and costs, and other appropriate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Caitlin Ferrari, Alyssa U., Maria P. and Melissa M., on behalf of themselves and all members of the Class, respectfully pray that this Court enter judgment:

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

B. Entering judgment against the Bills Defendants, jointly and severally, in the amount of Plaintiff's and Class members' individual unpaid wages, unreimbursed expenses, statutory damages under the Wage Theft Prevention Act and her spread of hours claim and actual and compensatory damages and pre- and post-judgment interest as allowed by law;

C. Entering judgment against Defendants in the amount by which they were unjustly enriched and the value of the services provided by Plaintiffs and other Class members.

D. Awarding Plaintiffs the attorneys' fees, costs and expenses incurred in this litigation;

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

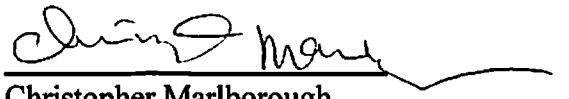
F. Enjoining Defendants NFL, Mateczun, Stejon, and Buffalo Bills from continuing the practices found illegal or in violation of the rights of the Class; and

G. Granting Plaintiffs and the Class such further relief as this Court deems just and proper.

Dated: New York, New York
January 28, 2015

Respectfully submitted,

THE MARLBOROUGH LAW FIRM, P.C.

By: 

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