

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JACLYN S.,
ALYSSA U.,
MARIA P.,
MELISSA M., and
GINA B.

SUMMONS SERVED
WITH COMPLAINT

Index No.

c/o Dolce Panepinto, P.C.
1600 Main Place Tower
350 Main Street
Buffalo, New York 14202

Plaintiffs,

v.

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

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

STEJON PRODUCTIONS CORPORATION
23 Ashley Drive
West Seneca, New York 14224

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer or, if the Complaint is not served with a Summons, to serve a Notice of Appearance on the Plaintiff's attorney(s) within twenty **(20)** days of this Summons exclusive of the day of service, or within thirty **(30)** days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment may be taken against you by default for the relief demanded in the Complaint.

Erie County is designated as the place of trial on the basis of the residence of the plaintiffs.

DATED: Buffalo, New York
April 22, 2014

By: Sean E. Cooney, Esq.
Frank J. Dolce, Esq.
Marc C. Panepinto, Esq.
DOLCE PANEPINTO, P.C.
Attorneys for Plaintiffs
1600 Main Place Tower
350 Main Street
Buffalo, NY 14202
(716) 852-1888

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JACLYN S.,
ALYSSA U.,
MARIA P.,
MELISSA M., and
GINA B.,

COMPLAINT

Index No.

Plaintiffs,

v.

BUFFALO BILLS, INC.,
CITADEL COMMUNICATIONS
COMPANY, LTD., and
STEJON PRODUCTIONS CORPORATION,

Defendants.

Plaintiffs, by their attorneys, Dolce Panepinto, P.C., as and for their Complaint against defendants herein, alleges:

1. Plaintiffs full names and addresses have been withheld from this Complaint in accordance with defendants' policy of concealing their employees' identities for the purpose of protecting their health and safety, and the recognized common law principle that plaintiffs may be permitted to proceed anonymously where identification poses a risk of retaliatory physical or mental harm. *See Deer Consumer Prods., Inc. v. Little*, 35 Misc.3d 374, 389 (N.Y. Sup. Ct. 2012).

2. By virtue of the application of one or more exemptions listed in §1602 of the CPLR, the limitations on liability imposed by that Article do not apply to the causes of action set forth herein.

PARTIES & JURISDICTION

3. At all times hereinafter mentioned, plaintiff JACLYN S. was and still is a resident of the County of Erie and the State of New York.

4. At all times hereinafter mentioned, plaintiff ALYSSA U. was and still is a resident of the County of Erie and the State of New York.

5. At all times hereinafter mentioned, plaintiff MARIA P. was and still is a resident of the County of Erie and the State of New York.

6. At all times hereinafter mentioned, plaintiff MELISSA M. was and still is a resident of the County of Niagara and the State of New York.

7. At all times hereinafter mentioned, plaintiff GINA B. was and still is a resident of the County of Erie and the State of New York.

8. Plaintiff Jaclyn S. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Citadel Communications Company, Ltd. during the 2010-2011 National Football League season. Plaintiff Jaclyn S. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Stejon Productions Corporation during 2011-2012 and 2012-2013 National Football League seasons.

9. Plaintiff Alyssa U. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Stejon Productions Corporation during 2012-2013 National Football League season.

10. Plaintiff Maria P. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Stejon Productions Corporation during 2012-2013 National Football League season.

11. Plaintiff Melissa M. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Stejon Productions Corporation during the 2013-2014 National Football League season.

12. Plaintiff Gina B. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Citadel Communications Company, LTD. during the 2010-2011 National Football League season. Plaintiff Gina B. was employed as a Buffalo Bills cheerleader for defendants Buffalo Bills, Inc. and Stejon Productions Corporation during the 2011-2012 and 2012-2013 National Football League seasons.

13. Plaintiffs are all former members of the Buffalo Bills cheerleading squad, known as the Buffalo Jills. (*hereinafter* “Jills”)

14. Upon information and belief, at all times hereinafter mentioned, defendant BUFFALO BILLS, INC. is and was a domestic business corporation doing business in the State of New York, and having a principal place of business located at One Bills Drive, Orchard Park, New York 14127.

15. At all times herein alleged, defendant Buffalo Bills, Inc. (*hereinafter* “Bills”), owned and controlled the Buffalo Bills, a highly profitable professional football franchise in the National Football League. According to Forbes Magazine, the Buffalo Bills franchise is valued at approximately \$870 million, and generates \$256 million in annual revenue. Upon information and belief, the Bills highest paid player, defensive end Mario Williams, gets paid a salary of approximately \$16 million per season.

16. The Buffalo Bills have had cheerleaders since the team was organized in 1960. In 1986, the Bills released management of the Jills to a private entity, local fast food chain Mighty Taco. Since then, a series of other private entities have managed the Jills, including Bradford Travel,

Salvatore's Restaurant, and defendants Citadel Communications Company, Ltd. and Stejon Productions Corporation.

17. The Buffalo Bills were and are the main beneficiary of the Jills' work, in that the team's reputation was and is enhanced by the Jills' gameday performances and by their work in the community. The Jills were and are bound by the Buffalo Bills Codes of Conduct and general standards. Furthermore, upon information and belief, the Bills' organization worked closely with defendants Citadel Communications and Stejon Productions in the management of the Jills' day-to-day activities. Lastly, the Bills were the actual owner of the Jills.

18. Upon information and belief, at all times hereinafter mentioned, defendant CITADEL COMMUNICATIONS COMPANY, LTD. (*hereinafter* "Citadel"), is and was a foreign limited partnership doing business in the State of New York, and having a principal place of business located at 951 Whitehaven Road, Grand Island, New York 14072.

19. At all times relevant, defendant Citadel owned and operated WGRF Buffalo, a radio station commonly referred to as "97 Rock." From 1999 to 2011, 97 Rock was the "official flagship station of the Buffalo Bills Radio Network." During this time, 97 Rock's on-air programming included broadcasts of Buffalo Bills' football games.

20. Prior to 2011, and at all times herein alleged, along with defendant Buffalo Bills, defendant Citadel, owned, operated and controlled the Buffalo Jills cheerleading squad, including employing the Jills. Citadel was and is a for-profit entity that drew substantial revenues from the Jills' work.

21. Upon information and belief, defendant STEJON PRODUCTIONS CORPORATION (*hereinafter* "Stejon") is and was a domestic business corporation with a principal place of business located at 23 Ashley Drive, West Seneca, New York 14224.

22. Upon information and belief, defendant Citadel transferred ownership and control of the Buffalo Jills to defendant Stejon in or around 2011. Along with defendant Buffalo Bills, defendant Stejon remains the controlling owner and operator of the Jills throughout the present day, including employing the Jills. Defendant Stejon is a for-profit entity that actively manages the Jills, and profits substantially from the Jills' work.

23. Although defendant Buffalo Bills, Inc. began leasing out the Jills in 1986, the football franchise still plays a very strong role in managing and controlling the Jills' activities. The Jills Handbook makes clear that the Jills abide by defendant Buffalo Bills' codes of conduct and general standards, and that the Bills were and are, at all times herein alleged, actively involved in the Jills' plans, ideas, programs and sponsorships. In addition, the Bills provided the Jills with game day tickets, and access to facilities for Jills activities, including cheerleading practice and the "Junior Jills" program. Indeed, defendant Stejon repeatedly refers to the Bills as owning the Jills over the last three years.

INTRODUCTION

24. Defendants Buffalo Bills, Inc. ("Bills"), Citadel Communications Company, Ltd. ("Citadel"), and Stejon Productions Corporation ("Stejon"), in flagrant violation of numerous laws of the State of New York, exploited plaintiffs, who worked for them as members of the Bills' cheerleading squad, by failing to pay them for all hours they worked each season. The Bills, Citadel and Stejon also failed to reimburse the Jills for certain business expenses, failed to pay them in a timely manner, took unlawful deductions and kick-backs from the Jills wages, unlawfully took gratuities paid to the Jills, failed to adhere to the notice and record keeping requirements of the Wage Theft Prevention Act, and were unjustly enriched as a result of the Jills'

work.

25. At all times herein alleged, defendants the Bills, Citadel, and Stejon required that, as a condition of employment, each and every Jill had to sign a written contract misclassifying the worker as an “independent contractor”. Contracts from prior years contained the same or substantially similar material terms.

26. This “contract” is illegal, void and unenforceable because, *inter alia*, its terms are contrary to New York State’s public policy as set forth in Labor Law § 650 (the Minimum Wage Act), it violates a statute imposing a penalty (Labor Law § 652), and its terms, particularly those relating to the amount of employee compensation, are too vague, indefinite and uncertain.

27. At all times relevant, the Jills worked as *employees* of defendants the Bills, Citadel, and Stejon, because the defendants exercised sufficient direction and control over the Jills including over the results and means of the work, to establish their status as employees. This is true despite the fact that the Jills were required to sign a “contract” misclassifying them as independent contractors.

28. The New York State Minimum Wage Act, which is codified in Article 19 of the New York Labor Law, sets forth the minimum hourly wage to which employees in New York State are entitled. In addition, Article 6 of the New York Labor Law mandates the timely payment of employee wages, and protects employee wages by prohibiting certain employer practices, such as taking illegal deductions and kick backs from the wages that employees are paid.

29. New York Labor Law § 650 (part of the Minimum Wage Act) recognizes that there are persons employed in this State at wages insufficient to provide adequate maintenance for themselves and their families. Such employment threatens the health and well-being of people so employed, constitutes unfair competition, threatens the stability of industry, reduces the

purchasing power of employees, requires that wages be supplemented by the payment of public monies, and injures the overall economy.

30. Thus, it is the declared policy of the State of New York that such conditions be eliminated as rapidly as practicable, and that minimum wage standards shall be established and maintained N.Y. Labor Law § 650.

31. Defendants, the Bills, Citadel, and Stejon have willfully and systematically exploited all those women who worked for them as Jills Cheerleaders, including plaintiffs, by failing to meet the minimum wage standards in contravention of the public policy and Labor Law of the State of New York.

32. Plaintiffs Jaelyn S., Alyssa U., Maria P., Melissa M., and Gina B., bring this action against defendants the Bills, Citadel, and Stejon for failure to pay minimum wage for all hours worked, failure to reimburse plaintiffs for certain business expenses, failure to pay them in a timely manner, taking unlawful deductions and kick-backs from plaintiffs' wages, unlawfully taking gratuities paid to plaintiffs, failure to comply with the notice and record keeping requirements of the Wage Theft Prevention Act, and unjust enrichment as a result of plaintiffs' work.

FACTUAL ALLEGATIONS

33. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1-32 as enumerated above, as more fully set forth herein.

34. Defendants the Bills, Citadel, and Stejon hold annual tryouts for the Jills' cheerleading squad. Approximately 200 women try out for the squad every year, and each is required to pay a \$50.00 tryout fee to defendants. In addition, defendants charge a fee of five

dollars to each of the approximately 75-100 spectators in attendance at the tryouts, including friends and family members of the prospective Jills cheerleaders.

35. Upon making the squad, the Jills were and are, at all times herein alleged, required to attend all of the Buffalo Bills' preseason, regular season, and postseason home football games. They were also required to attend and participate in all practices, rehearsals, fittings, preparations, drills, photo sessions, meetings, and workouts, as determined and directed by defendants the Bills, Citadel, and Stejon. Furthermore, the Jills were required to attend other events, engagements and functions on behalf of the Bills, Citadel, and Stejon.

36. According to the Buffalo Jills Cheerleading Agreement, the Jills did not receive any monetary compensation for appearances at the Buffalo Bills football games. Typically, Jills worked eight (8) hours on a game day. Upon information and belief, defendant Buffalo Bills, Inc. provided defendant Stejon (and formerly Citadel) with one Buffalo Bills game ticket per Jill, each valued at \$90.00, and one parking pass per Jill, each valued at \$25.00, for each home game they worked. Excluding the playoffs, there were eight home regular season games throughout the football season. Defendants Citadel and Stejon had and have total control over the ticket and parking pass, including the methods by which the same were distributed.

37. The Jills were required to attend practice sessions approximately twice a week, according to a schedule set forth by defendants Stejon, and formerly Citadel. The Jills typically spent eight (8) hours per week practicing. The Jills received no compensation from defendants for their practice time.

38. According to the 2013 Buffalo Jills Handbook issued by defendant Stejon, each Jill was also required to make between 20-35 appearances throughout the year at corporate, community, and charity events, the majority of which were unpaid. In addition, there were at least

six other mandatory appearances throughout the year that did not count towards each individual Jill's appearance tally. These included the Buffalo Bills NFL Draft event, Tim Horton's Camp Day, the Jills Golf Tournament, Bills Training Camp in Rochester, the Calender Release Party (at Turning Stone Casino near Syracuse), and the Junior Jills Program. Upon information and belief, the Jills, collectively, at all times relevant, made over 900 appearances throughout the year at corporate, community, and charity events.

39. A handful of appearances throughout the year were designated as "paid appearances" by defendant Stejon, and formerly, defendant Citadel. Upon information and belief, defendant Stejon charged clients \$115.00 per hour for these paid appearances. However, whether any particular Jill was selected to participate in these paid events was in the complete discretion of defendant Stejon and formerly Citadel. Many Jills did not participate in any paid appearances.

40. Most of the mandatory Jills' appearances were designated as "sponsor appearances," which were a benefit offered as part of sponsorship packages sold by defendants, Buffalo Bills, Stejon, and formerly Citadel, to outside vendors. Defendants had at least eleven named sponsors in 2013. Upon information and belief, Stejon collected a minimum of \$10,000 for each sponsorship that it sells. The Jills cheerleaders received no compensation from defendants for sponsor appearances.

41. All Jills were required to participate in the "Junior Jills" program, wherein they taught workshops to young girls on the basics of cheerleading. The program was run by defendants Citadel and Stejon, and was held at three sites: Buffalo, Rochester, and Toronto. Parents of Junior Jills paid a fee of \$250.00 per child for enrollment in the program. Upon information and belief, between 300-400 children enrolled in the program every season, including approximately 100 children at the Buffalo site. At the direction of Citadel and Stejon,

participating Jills provided instruction to the children over the course of several days. The Jills received no compensation for their participation in the Junior Jills program.

42. The Jills were required by defendants to make several mandatory unpaid appearances during the year at which the required means of their work was demeaning and degrading treatment, including:

- A. The Jills Annual Golf Tournament–Select Jills were required to wear a bikini, and then go into a dunk tank, where they were dunked in water by the golf tournament participants. Jills cheerleaders are also “auctioned off” like prizes at this event, and had to ride around with the winning bidder in his golf cart for the duration of the tournament. While serving as a “bought person” they were subjected to additional demeaning treatment, including degrading sexual comments and inappropriate touching. Oftentimes, the Jills were forced to sit on participants’ laps because there was not enough seats in the golf carts. The golf tournament also featured a “Flip for Tips” component, wherein participants paid gratuities to watch select Jills do backflips and acrobatics for the gratification of the crowd. (The Jills did not receive any of the tip money).
- B. “The Man Show”–At this event, which is held at Seneca Niagara Casino in Niagara Falls, cheerleaders were required to wear bathing suits and other revealing attire, and were then paraded around for the gratification of the predominantly male crowd. Again, the Jills were forced to endure lecherous stares and demeaning comments of a sexual nature at this event.
- C. The Calender Release Party–This event, mandatory for all Jills, was

essentially a bikini show held at the “Lava” nightclub inside the Turning Stone Casino and Resort. The show started at approximately midnight and continued until 2 a.m. There was no stage or security provided, and the Jills women were forced to walk in uncomfortably close proximity to the club patrons while wearing nothing but a bathing suit. As a result, many of the participating Jills were groped or touched inappropriately by audience members during the performance. The Jills received no compensation for their participation in this event.

43. Upon information and belief, between game performances, practices, rehearsals, and appearances, each individual Jill provides approximately 20 hours of unpaid labor per week in the service of defendants the Buffalo Bills, Citadel, and Stejon. This equals 840 hours of unpaid work per woman, per year.

44. At all relevant times herein, plaintiffs were not paid any, sufficient and/or timely wages for the hours worked while employed by defendants.

45. Plaintiff Jaclyn S. was paid approximately \$806.00 for all of her work as a Jill during the 2012-2013 football season, \$ 800.00 for all of her work during the 2011-2012 season, and \$1,800.00 for all of her work during the 2010-2011 season.

46. Plaintiff Alyssa U. was paid \$420.00 for all of her work as a Jill during the 2012-2013 football season.

47. Plaintiff Maria P. was paid \$105.00 for all of her work during the 2012-2013 season.

48. Plaintiff Melissa M. was paid \$210.00 for all of her work as a Jill during the 2013-2014 football season.

49. Plaintiff Gina B. was paid \$625.00 for all of her work as a Jill during the 2012-2013 football season, 450.00 for all of her work during the 2011-2012 season, and \$605.00 for all of her work during the 2010-2011 season.

50. Pursuant to New York Labor Law § 652 and New York State Department of Labor Code 142.2.1, the State's minimum wage on and after July 24, 2009 was \$7.25 per hour. The State's minimum wage was raised to \$8.00 per hour on December 31, 2013. Plaintiffs' wages for all of the years they worked as Jills were substantially below the minimum wage required by New York State law.

51. In addition to being exploited by defendants for hundreds of hours of unpaid work every year, the Jills were also subjected to further economic loss by way of penalties levied against the Jills for various infractions, as well as significant, mandatory out-of-pocket business expenses that the Jills were forced to incur.

52. Defendant Stejon Productions, through its director, Stephanie Mateczun, and formerly defendant Citadel, implemented a schedule of penalties for the Jills, including revocation of their Buffalo Bills game ticket and parking pass, benching, suspension and/or dismissal. According to defendant's policy, penalties may be, and were imposed against the Jills for a wide variety of perceived infractions, including, but not limited to:

- A. Being absent from, arriving late to, or leaving early from gameday performances, practices, rehearsals, appearances or other Jills events
- B. Wearing the wrong attire to a game, practice or event
- C. Failing the "Jiggle Test" (physique requirements)
- D. Lack of preparation or knowledge of material
- E. Not participating or performing 100%

- F. Not keeping pace with the majority of the team
- G. Negative or disruptive attitude
- H. Failing to reach or maintain their “right split”
- I. Fraternalization with Bills players
- J. Posting pictures online in Jills attire
- K. Any conduct “unbecoming of a Jill”

53. The discretion on whether and when to impose penalties against the Jills cheerleaders lied entirely with defendants Citadel and Stejon Productions. Revocation of a Jill’s game ticket and parking pass was essentially a \$115.00 fine, based on the value of those items.

54. Plaintiffs had their game ticket and parking pass revoked by defendants for various perceived infractions. For example, Jaclyn S. had one of her game tickets revoked for posting a picture on Twitter, and Gina B. had one of her parking passes revoked for “having a bad attitude.”

55. Rules violations also resulted in Jills being “benched” for Buffalo Bills home games, meaning that they were not allowed to perform with the dance squad at the game. Jills that were benched were still required to come to the stadium, where they were forced by defendants to sit in the locker room for the duration of the game (approximately three hours).

56. Plaintiff Maria P. was benched twice during the 2013 season for uniform violations.

57. The Jills also suffered economic damage in the form of uncompensated business expenses for items that were necessary to perform the duties of a Jills cheerleader. Stejon’s, and Citadel’s policy was that a Jill’s failure to pay for these items out-of-pocket would prevent that Jill from procuring or retaining a position on the cheerleading squad. Items that the Jills were forced to pay for include, but are not limited to:

- A. Uniforms—each Jill was responsible for purchasing her own, traditional uniform set. The cost was approximately \$650.00
- B. Hairstyling—Jills had to have their hair styled in a manner that conformed to the Jills’ physique requirements
- C. Nails—Jills had to have their nails done in a manner that conformed to the Jills’ physique requirements.
- D. Travel—Jills were frequently required to travel to out-of-town destinations for appearances, including Buffalo Bills training camp in Rochester, New York, Turning Stone Resort in Syracuse, New York, and Buffalo Bills games in Toronto, Ontario, Canada. Defendants failed to compensate the Jills for their time spent traveling, or for travel expenses such as fuel and hotel accommodations.

58. In addition to the aforementioned expenses, each Jill was required to purchase between 50-75 Jills swimsuit calenders from defendants Citadel and Stejon, at a cost of \$10.00 apiece. The total out-of-pocket expense for each cheerleader was between \$500.00 and \$750.00. Each Jill then had to sell those calenders on her own time in order to recoup the money. If a Jill failed to meet the minimum sales requirement, she was forced to personally absorb the financial loss and, according to the Jills Handbook, was *subject to further penalties* at the discretion of defendants.

59. Each Jill was also required to sell, on her own time, four \$125.00 tickets to the annual Jills Golf Tournament (a \$500.00 commitment). Again, any Jill who failed to meet the minimum sales requirement was subject to personal financial loss and discipline at the discretion of defendants. The Jills were also required to solicit (on their own unpaid time) three gift baskets

with a minimum value of \$30.00 apiece to be raffled off at the Golf Tournament (a \$90.00 commitment). Jills that were unable to solicit the required number of baskets had to pay out-of-pocket to fulfill the basket requirement.

60. In addition to their financial obligations, the Jills were also subjected to an onerous set of rules dictating how the women could walk, talk, dress, speak and behave, both in uniform and in their personal lives. These rules were set forth by defendants the Bills, Citadel, and Stejon in the Buffalo Jills Handbook, a lengthy document filled with rules and regulation to which the Jills had to adhere in order to attain and preserve their position with the squad.

61. Many of the rules set forth by defendants in the Buffalo Jills Handbook pertain to the Jills' physical appearance. These include, but are not limited to, the following rules:

- A. Jills' nails must be maintained with a French manicure or natural polish only.
- B. Jills are assigned a specific look to maintain for their hair and makeup. Any deviations from the assigned look, such as hair color or style, are grounds for being benched, dismissed, or having their game tickets revoked.
- C. The Jills' Director must approve any change in hair color or style prior to it being done.
- D. Each Jill is subject to mandatory gym, hair, and makeup consultations with vendors selected by defendants
- E. Various prescriptions on the type and amount of makeup, jewelry, piercings and accessories that may be worn.

62. In addition, the Jills were subjected to weekly "physique evaluations" during which

defendants' representatives tested the Jills' bodies for "jiggling." During the "Jiggle Test" defendants scrutinized the women's stomach, arms, legs, hips, and butt while she does jumping jacks. The physique evaluations largely determine whether or not any particular Jill would be allowed to perform at the Bills' next home game. Jills that failed to meet defendants' physical standards received warnings, and in some cases were penalized, suspended or dismissed.

63. During the 2011 football season, Stephanie Mateczun, of defendant Stejon Productions, warned plaintiff Gina B. to "tone up" her body if she wished to continue performing with the squad. Over the following month, Gina successfully adopted a rigorous diet and workout regimen in order to lose weight and tone muscle. At the conclusion of that month, instead of lauding Gina for her hard work, Mrs. Mateczun accused Gina of employing unhealthy methods of weight loss, even going so far as to suggest that Gina was anorexic.

64. The Jills activities were further monitored and controlled by a representative of defendant Buffalo Bills, who conducted regular inspections of the cheerleading squad. Upon information and belief, the Jills' uniform design, calender photos, choreography and music is and was subject to the final approval of defendant Buffalo Bills, Inc.

65. In addition to the rules previously cited, defendants also provided the Jills with rules regarding general hygiene and body maintenance (a list of 17 rules), appearance etiquette (17 rules), conversation starters for appearances and general etiquette, etiquette for formal dining (25 rules), and rules for communicating with people with disabilities (17 rules).

66. The extensive rulebook set forth by defendants includes, *inter alia*, rules on how much bread to eat at a formal dinner, how to properly eat soup, how much to tip restaurant waiters, wedding etiquette, how to properly wash "intimate areas," and how often to change tampons.

67. Defendants made clear that the failure to comply with the aforementioned rules would result in benching, suspension, dismissal or other penalty. Defendants strictly enforced their rules, often with reckless disregard for the plaintiffs' health and well-being. For example, defendants forced plaintiff Jaclyn S. to attend a Jills' practice less than two hours after she underwent laser eye surgery, despite doctor's orders that she go directly to bed after the procedure. Due to the surgery, Jaclyn could not participate in the practice, and was instead forced to lie down on the practice field for the duration of the three hour session. Defendants also forced Jaclyn to attend a Bills home game, against doctor's orders, two days after her surgery. Defendants made clear to plaintiff that her failure to attend these events would result in disciplinary action.

68. Finally, defendants imposed severe restrictions on the Jills' freedom to engage in other work. For example, for the term of their contract with defendants, the Jills were prohibited from participating "in any other capacity or employment in promotions, advertising, modeling or photography, with other than the Buffalo Jills, Stejon Productions and/or its official photographer, without first having obtained the written or verbal consent of the Director." The Jills' Handbook also prohibited the Jills from taking part in contests and/or fashion shows, media events, commercials or advertisements, in or out of uniform.

69. The Jills Code of Conduct also purported to irrevocably grant to defendants Stejon and the Bills, "the perpetual right to use publish, or reprint in whole or in part, any and all images and/or videos or other reproductions of [the Jills] for any purpose and in any medium." Accordingly, the Code of Conduct also prohibited the Jills from posting photos of themselves, or making references to their NFL affiliation on websites or other social media.

70. The Jills have suffered economic damage as a result of the aforesaid restrictions on outside work.

71. Defendants, the Bills, Citadel, and Stejon have willfully violated numerous laws of the State of New York, including, but not limited to, New York Labor Laws §§ 652, 191, 193, 195, 198-b, 196-d, and various regulations promulgated thereunder, including Sections 142-2.1 and 195-4.5 of the New York State Department of Labor Code.

72. Plaintiffs are entitled to relief under these laws, as set forth more fully below.

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFFS

Willful Failure to Pay Minimum Wage

(Violation of New York Labor Law § 652 and 12 NYCRR 142-2.1)

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

74. The failure of an employer to pay its employees the minimum wage fixed by the New York State Department of Labor violates, *inter alia*, New York Labor Law § 652 and New York State Department of Labor Code 142-2.1.

75. Defendants willfully failed to pay plaintiffs the minimum wage for all hours worked by requiring them to perform work without compensation.

76. Pursuant to Labor Law § 663, plaintiffs are entitled to recover in a civil action the unpaid balance of the full amount of the minimum wage for all hours worked, costs and reasonable attorneys' fees, prejudgment interest, and liquidated damages equal to one hundred percent of the total of such underpayments found to be due.

**AS AND FOR A SECOND, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**

**Failure to Pay Wages in a Timely Manner
(Violation of New York Labor Law § 191)**

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

78. The failure of an employer to pay its employees wages at least semi-monthly on regular pay days designated in advance by the employer violates, *inter alia*, New York Labor Law § 191.

79. Defendants failed to pay plaintiffs at all, and thus they failed to pay timely, as prescribed by Labor Law § 191.

80. As a result of defendants' unlawful conduct as herein alleged, plaintiffs have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

**AS AND FOR A THIRD, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**

**Unlawful Deductions From Wages
(Violation of New York Labor Law § 193 and 12 NYCRR 195-4.5)**

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

82. New York Labor Law § 193 provides that it shall be unlawful for an employer to make any deduction from the wages of an employee, other than deductions which are expressly authorized in writing by the employee, and are for the benefit of the employee.

83. New York State Department of Labor Code 195-4.5 provides that it is unlawful for

an employer to impose fines or penalties for tardiness, excessive leave and misconduct.

84. Defendants had a policy and practice of subjecting plaintiffs to penalties for various infractions, and revoking benefits previously conferred on plaintiffs, including game tickets and parking passes.

85. As a result of defendants' unlawful conduct as herein alleged, plaintiffs have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

86. Pursuant to Labor Law § 198, plaintiffs are also entitled to attorneys' fees, prejudgment interest, and the expenses and costs of suit.

**AS AND FOR A FOURTH, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**
Unlawful Kick-Back of Wages

(Violation of New York Labor Law § 198-b and 12 NYCRR 195-4.5)

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

88. New York Labor Law § 198-b provides that whenever any employee is engaged to perform labor for an agreed-upon rate of wages, it shall be unlawful for any person to request, demand or receive, a return, donation or contribution of any part, or all of said employee's wages upon the statement, representation or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment.

89. New York State Department of Labor Code 195-4.5 provides that it is unlawful for an employer to make deductions from an employee's wages for employee purchases of tools, equipment and attire.

90. Defendants had a policy and practice of demanding and receiving substantial and unlawful kick-backs of plaintiffs wages in the form of penalties and up-front contributions for items such as Jills' swimsuit calenders. Furthermore, defendants made representations to plaintiffs, orally and in writing, that said contributions were mandatory, and that the failure to comply with defendants' demands would prevent plaintiffs from retaining employment.

91. As a result of defendants' unlawful conduct as herein alleged, plaintiffs have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

92. Pursuant to Labor Law § 198, plaintiffs are also entitled to attorneys' fees, prejudgment interest, and the expenses and costs of suit.

**AS AND FOR A FIFTH, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**
Unlawful Acceptance of Employee Gratuities
(Violation of New York Labor Law § 196-d)

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

94. New York Labor Law § 196-d provides that it shall be unlawful for an employer to demand or accept any part of the gratuities received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee.

95. Defendants had a policy and practice of unlawfully demanding and accepting gratuities received by plaintiffs at various events, including the annual Jills Golf Tournament.

96. As a result of defendants' unlawful conduct as herein alleged, plaintiffs have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an

amount to be determined at trial.

97. Pursuant to Labor Law § 198, plaintiffs are also entitled to attorneys' fees, prejudgment interest, and the expenses and costs of suit.

**AS AND FOR A SIXTH, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**
**Unlawful Failure to Comply With the Record Keeping Requirements of the New York
Wage Theft Prevention Act**
(Violation of New York Labor Law § 195)

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

99. New York Labor Law § 195 provides that every employer shall provide his or her employees, in writing, at the time of hiring, with a notice setting forth, *inter alia*, the employee's rate of pay, frequency of pay (hourly, daily, weekly, e.g.), the regular pay day, the name of the employer (including "doing business as" names), the address of the employer, the telephone number of the employer, and any other information that the Commissioner of Labor deems material and necessary.

100. New York Labor Law § 195 further requires all employers to furnish each employee with a statement with every payment of wages listing, *inter alia*, the dates of work covered by that payment of wages, and the rate of pay and the basis thereof.

101. New York Labor Law § 195 further requires all employers to establish, maintain, and preserve, for not less than six years, contemporaneous, true and accurate payroll records for all employees.

102. Defendants failed to comply with the notice and record keeping requirements of Labor Law § 195, in that they failed to provide plaintiffs with the proper wage notice at the time of hiring, and failed to provide wage statements when payments were made. Upon information and belief, defendants also failed to establish, maintain, and preserve true and accurate payroll records for the last six years, as mandated by Labor Law § 195.

103. As a result of defendants' unlawful conduct as herein alleged, plaintiffs have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

104. Pursuant to Labor Law § 198, plaintiffs are also entitled to attorneys' fees, prejudgment interest, and the expenses and costs of suit.

**AS AND FOR A SEVENTH, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS
Unjust Enrichment**

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

106. Based upon the defendants' wrongful conduct, plaintiffs seek to recover, at law, monies held by the defendants that belong to plaintiffs in equity and good conscience.

107. Where benefits have been received and retained under such circumstance, it would be inequitable and unconscionable to permit the party receiving them to avoid payment. Therefore, the law requires the party receiving the benefits to pay their reasonable value.

108. The circumstances are such that it is inequitable and unjust for the defendants to retain the benefits of plaintiffs' numerous hours of labor without compensating them. Plaintiffs seek compensation for the benefits, unjustly received by the defendants, including revenues from

sponsors, sales and promotions, in addition to interest, attorneys' costs and fees, and other damages as allowed by law and equity.

**AS AND FOR A EIGHTH, SEPARATE, AND DISTINCT CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS**
Quantum Meruit

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

110. Plaintiffs performed valuable services for the defendants by performing on game days, and attending practices, rehearsals and appearances..

111. Defendants requested that the plaintiffs render these valuable services and knowingly accepted the benefits of plaintiffs labor.

112. The defendants' failure to compensate the plaintiff for these valuable services is unjust in that the defendants enjoyed the value of those services and benefits provided by the plaintiff's labor.

113. The plaintiff expected compensation at the time services were rendered to the defendants, but for the defendants' improper and unlawful claims of exemption from payment for the compensation for services.

114. Plaintiff now seeks repayment of the compensation wrongly withheld, in addition to interest, attorney's costs and fees and other damages as allowed by law and equity.

WHEREFORE, plaintiffs demand judgment against the defendants on all causes of action in an amount that exceeds the jurisdiction of all lower courts that otherwise have jurisdiction, exclusive of costs, statutory interest, disbursements, and such other, further, or different relief as the Court deems just and proper.

DATED: Buffalo, New York
April 22, 2014

By: Sean E. Cooney, Esq.
Frank J. Dolce, Esq.
Marc C. Panepinto, Esq.
DOLCE PANEPINTO, P.C.
Attorneys for Plaintiffs
1600 Main Place Tower
350 Main Street
Buffalo, NY 14202
(716) 852-1888