



Cheerleaders in the NFL: Employment Conditions and Legal Claims

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I. INTRODUCTION

In 2002, National Football League cheerleaders made headlines when they brought suit against 29 NFL teams. The cheerleaders, working for the Philadelphia Eagles, claimed that visiting teams looked into the cheerleaders' bathroom and dressing rooms without the cheerleaders' knowledge.¹ These shocking and grotesque allegations were hardly the last claims made by cheerleaders against NFL teams. The Cincinnati Bengals settled a class-action lawsuit for \$255,000 brought by cheerleaders in 2014 claiming the team violated federal minimum wage laws.² In early spring 2018, against the backdrop of the #MeToo movement, cheerleaders from numerous teams publicly described employment conditions which they claimed included sexual harassment, sex-based discrimination, and unfair pay.³ The long history

¹ See Debbie Goldberg, *Cheerleaders Say Visiting Players Spied on Them*, THE WASHINGTON POST, Jan. 24, 2002, available at https://www.washingtonpost.com/archive/politics/2002/01/24/cheerleaders-say-visiting-players-spied-on-them/2d5a9ca9-83fb-4223-b936-998c24a90da2/?noredirect=on&utm_term=.08214f480d18, [<https://perma.cc/MSH9-36LC>].

² See Patrick Redford, *Ben-Gals Cheerleaders Win \$255,000 Settlement In Lawsuit Against The Bengals*, DEADSPIN, Oct. 24, 2015, <https://deadspin.com/ben-gals-cheerleaders-win-255-000-settlement-in-lawsui-1738481954>, [<https://perma.cc/6MHN-W3RN>] (on file with the Harvard Law School Library).

³ See e.g., Juliet Macur & John Branch, *Pro Cheerleaders Say Groping and Sexual Harassment Are Part of the Job*, THE NEW YORK TIMES, Apr. 10, 2018, available at <https://www.nytimes.com/2018/04/10/sports/cheerleaders-nfl.html?rref=collection%2Ftimestopic%2FCheerleaders&action=click&contentCollection=timestopics®ion=stream&module=inline&version=latest&contentPlacement=4&pgtype=col>

of these claims raises the question: why, even after numerous settlement agreements, are similar claims made against NFL teams regarding their cheerleaders' employment conditions?

This paper explores the various legal claims cheerleaders have brought against their employers, NFL teams, based on their employment conditions. The claims are divided into three categories: first, the Philadelphia Eagles cheerleaders' claim against 29 NFL teams regarding their long-standing tradition of peering into the cheerleaders' locker room from their adjacent locker room demonstrates cheerleaders' long history of enduring inappropriate employment conditions. Next, this paper explores four wage and hour claims. Together, these claims represent an even larger group of similar wage and hour claims cheerleaders from different NFL teams have brought against their employers. The final category consists of the recent claims brought by cheerleaders against their respective NFL teams alleging harassment and discrimination, demonstrating that cheerleaders still face a long road towards fair employment practices in their workplace. Throughout the paper, examples from cheerleaders' rulebooks demonstrate their employment conditions and the often-sexist requirements their employers impose.

II. AN ANALYSIS OF CHEERLEADERS' CLAIMS AGAINST THEIR NFL TEAMS BASED ON MULTIPLE LEGAL THEORIES

A. *Invasion of Privacy, Emotional Distress, and Conspiracy in the Philadelphia Eagles' Cheerleaders' Locker Room*

Susette Walsh worked as a cheerleader for the Philadelphia Eagles between 1986 and 1988, and again from 1988 until 2001.⁴ For a time during those six years, she also served as a squad captain.⁵ She and the rest of the Eagles cheerleaders practiced two nights each week and spent entire home game days⁶ at the Eagles' then-home stadium, Veterans Stadium, located in Philadelphia, PA. Despite the considerable amount of time Walsh spent working at Veterans Stadium, she was unaware of a crucial aspect of her designated locker room: visiting teams were able to peep into the cheer-

lection, [<https://perma.cc/C85V-UZR2>]; see also *NFL cheerleaders sue teams over unfair wages and working conditions*, THE INDEPENDENT, Jun. 5, 2018, available at <https://www.independent.co.uk/sport/us-sport/national-football-league/nfl-cheerleaders-houston-texans-sue-buffalo-bills-oakland-raiders-new-york-jets-a8383766.html>, [<https://perma.cc/7VQH-CENK>].

⁴ See Goldberg, *supra* note 1.

⁵ See *id.*

⁶ See *id.*

leaders' locker room from the visiting team locker room.⁷ Most disturbingly, while Walsh and the cheerleaders remained unaware of this feature, this “special ‘perk’ of being a visiting team of the Eagles. . . [was] common knowledge among virtually the entire National Football League.”⁸ Walsh was unaware that her locker room was the subject of spying until she heard so – not from the Eagles – but while sitting at home, watching a postgame show after an Eagles versus New York Giants game in January 2001.⁹

Indeed, when *The New York Times* first reported the story in January 2001, a number of interested parties confirmed that visiting teams had engaged in such spying behavior for years. Several then-current NFL players, former players, agents, and even an Eagles team official confirmed visiting players spied into the cheerleaders' locker room.¹⁰ Two former Dallas Cowboys players personally confirmed they participated in spying on the cheerleaders.¹¹ The parties described detailed accounts of how visiting players utilized the locker rooms' physical defects to spy on the cheerleaders. For example, players noted that doorknobs, which connected the visiting locker room to the cheerleaders' locker room, had fallen out; and crevices had formed in between the two locker rooms, due to the age of the stadium.¹² Players described actively damaging preventative measures the cheerleaders or team had made in order to prevent the spying: players admitted to poking holes through tape which had been placed over the crevices, and scraping off the paint of a window between the locker rooms which had been painted over.¹³ They even acknowledged they “got into shoving matches to catch a glimpse of the women.”¹⁴ How did the visiting teams know about the free peep show that came with a trip to the Eagles' stadium? Apparently, in a show of sportsmanship among rivals, teams passed “the information about the openings. . . from team to team.”¹⁵

⁷ *See id.*

⁸ *Id.*

⁹ *See id.*

¹⁰ *See* Mike Freeman, *PRO FOOTBALL: NOTEBOOK; Comella Characterizes the Giants' Work Ethic*, THE NEW YORK TIMES, Jan. 7, 2001, available at <https://www.nytimes.com/2001/01/07/sports/pro-football-notebook-comella-characterizes-the-giants-work-ethic.html>, [<https://perma.cc/2L9S-K8NB>].

¹¹ *See id.*

¹² *See id.*; The Eagles' final game in the Veterans Stadium was in January 2003. The team moved into its current stadium, Lincoln Financial Field, in August 2003. Veterans Stadium was opened in April 1971, closed in September 2003, and demolished in March 2004.

¹³ *See* Freeman, *supra* note 10.

¹⁴ *Id.*

¹⁵ *Id.*

The breaking *New York Times* report included perspectives from Eagles' personnel, though the team's front office declined to officially comment in the initial report. Then-director of the cheerleading team, Marylou Tammaro, acknowledged she and the team were aware of rumors about visiting players as "peeping Toms."¹⁶ Tammaro noted that players have "tried to drill holes so they can see in [the cheerleaders'] room" but stated the players were unsuccessful.¹⁷ While maintaining the rumors of spying were merely rumors, Tammaro said her repeated pleas to Philadelphia city officials to provide a safe, private environment for the cheerleaders had been ignored.¹⁸ Still, she said the team had "taken precautions," and she or the cheerleaders replace the tape and repaint the window before every home game.¹⁹ Though Tammaro's and the other interviewed parties' accounts suggest some cheerleaders were aware of the spying, Walsh was unaware that she was being exposed to such conditions during her time working for the Eagles. Further, visiting teams confirmed they were aware of the locker room conditions for years before the *New York Times* report.

When the visiting players' actions became public, Eagles cheerleaders were prompted to pursue action. Walsh initially tried to settle privately with NFL teams.²⁰ However, when her attempt failed, she and one other former Eagles cheerleader joined together to file a federal lawsuit against 23 visiting teams.²¹ The suit sought damages of at least \$75,000²² for invasion of privacy, emotional distress, negligence, and conspiracy.²³ Soon, other cheerleaders asked to join the lawsuit. Ultimately, Susette Walsh and 43 other former Eagles cheerleaders filed suit in Philadelphia's Common Pleas Court.²⁴ The suit named the twenty-nine NFL teams that visited the Eagles' stadium since 1983.²⁵ The court and Honorary Sandra Mazer Moss settled

¹⁶ See *id.*

¹⁷ *Id.*

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ Goldberg, *supra* note 1, at 2.

²¹ See Joann Loviglio, *Eagles Cheerleaders Allege Spying*, THE WASHINGTON POST, Aug. 9, 2001, available at http://www.washingtonpost.com/wp-srv/aponline/20010809/aponline100407_000.htm?noredirect=on, [<https://perma.cc/W8LL-VJU5>].

²² *Id.*

²³ Goldberg, *supra* note 1, at 1.

²⁴ Complaint, Walsh v. Dallas Cowboys ETAL, No. 18-03101318 (Pa. D. Aug. 6, 2003), available at https://fjdefile.phila.gov/efsfjd/zk_fjd_public_qry_03.zp_dkt rpt_frames.

²⁵ See Goldberg, *supra* note 1, at 1.

the parties' lawsuit in November 2005.²⁶ There is little more public information available regarding the settlement agreement, except that \$417,905 in attorney's fees was divided among the attorneys in May 2006.²⁷ In April 2012, the court records of the lawsuit were destroyed in accordance with county records provisions.²⁸

However, the amended complaint of Rhonda Cowan, one of the plaintiffs, is available. Cowan worked as a cheerleader for the Eagles for the three seasons from 1982-1984, so her complaint names only those teams that visited the Eagles' stadium during those three seasons as defendants.²⁹ Cowan's complaint makes clear that her duties owed to the Eagles as a cheerleader did not require her to be viewed naked by the defendants, and she did not consent to being seen naked.³⁰ The complaint placed the beginning of the defendants' actions at least as early as 1973.³¹ The complaint alleged the defendants utilized the stadium's physical conditions mentioned above to peep into the cheerleaders' locker room, and that the conditions were sometimes created by the defendants themselves.³² Further, these conditions were common knowledge throughout the NFL, and even visiting teams' agents, employees, and other personnel utilized this knowledge to engage in such actions.³³ The complaint characterizes this information as a "carefully guarded secret among the participants," helping to explain why Cowan was an unwitting victim of the peeping.³⁴ The complaint sought redress for several torts, including invasion of privacy, intrusion upon seclusion, intentional infliction of emotional distress, gross negligence regarding failure to supervise, negligence regarding failure to supervise, and conspiracy.³⁵ The conspiracy claim alleges the teams aided and abetted each other to engage in the peeping, and agreed to keep the peepholes and cracks a secret, in order that the teams could continue to utilize them inappropriately.³⁶

²⁶ See Complaint, *Walsh v. Dallas Cowboys ETAL*, No. 18-03101318 (Pa. Com. Pl. Aug. 6, 2003), available at https://fjdefile.phila.gov/efsfd/zk_fjd_public_qry_03.zp_dktrpt_frames.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Plaintiff's Amended Complaint, *Cowan v. Cowboys ETAL*, No. 0137 (Pa. Com. Pl. Jun. 21, 2004).

³⁰ See *id.*

³¹ *Id.*

³² See *id.*

³³ See *id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *id.*

Notably, the Philadelphia Eagles were not named in the lawsuit that settled in 2005. Cowan's complaint cites the *respondeat superior* doctrine to impute liability onto the visiting teams because they either participated in the acts, or were aware of the acts and their wrongfulness, but did not stop them despite having the authority and ability to do so.³⁷ Of course, the Eagles were not the visiting team in their own stadium, so the players did not use the visiting team's locker room. The home team's locker room was not adjacent to the cheerleaders' locker room in Veterans Stadium. Still, given that the lawsuit alleged that the locker room's utility was pervasively known throughout the NFL, perhaps the suit could have named the Eagles as a defendant as well, as they knew about the conditions but took no action to stop the behavior. In fact, Cowan's complaint alleges the defendants' conspiracy included Eagles agents, employees, and management, "who were aware of the peeping, and aided and abetted its continuance by not taking any measures to stop or expose the conduct."³⁸ The Eagles arguably had even greater ability than the visiting teams to stop the behavior, given they likely had some control over the conditions of the locker rooms and stadiums.

Veterans Stadium was in fact owned by Philadelphia, but the city was not named as a defendant either. Walsh's lawyer, Michael McKenna, explained why the Eagles and the city of Philadelphia were not among the defendants. In addition to the Eagles players not participating in the spying due to their locker room location, McKenna, looking forward to a jury trial, understood that jurors were likely to be "hometown fans" and convincing them of the Eagles' wrongdoing would be a more difficult task than convincing them of a rival team's illegal behavior.³⁹ McKenna considered suing the city as well, but the cheerleaders' main complaint was against the visiting teams' intentional behavior.⁴⁰ The Eagles cheerleaders' lawsuit represents a situation in which NFL teams were alleged to have known about grossly inappropriate behavior towards cheerleaders for numerous seasons. Even in such a case where the home team itself seems to have been able to easily take measures to protect its cheerleaders, the victims themselves needed to make legally strategic decisions to omit the home team from their case.

³⁷ See *id.*

³⁸ *Id.*

³⁹ See Goldberg, *supra* note 1.

⁴⁰ *Id.*

B. *Unpaid Wages Across the League*

Cheerleaders from various teams across the NFL have brought unpaid wages claims against their team-employers. For purposes of clarity, this paper will focus on four claims that represent the longstanding and ubiquitous practice of underpaying cheerleaders for their work. The claims also demonstrate how teams use rulebooks to implement conditions and requirements that affect cheerleaders both on the job and in their personal lives. Rulebooks are also later addressed in section C. *Claims Brought in the Midst of the #MeToo Movement Consist of Discrimination and Harassment Claims.*

1. Cincinnati Bengals Settle After Paying Ben-Gals an Alleged \$2.85 Per Hour

In 2014, the Cincinnati Bengals faced a federal class action lawsuit brought by a number of their cheerleaders, known as the Cincinnati Ben-Gals. Alexa Brenneman, the named plaintiff, applied for class action certification of all people who were employed by the Bengals as Ben-Gal cheerleaders anytime since February 11, 2011.⁴¹ During the class opt-in period, six former Ben-Gals filed opt-in notices.⁴² Brenneman herself was a Ben-Gal between May 2013 and January 2014. The complaint first establishes the prominent function the cheerleaders fulfill for their team. The preliminary statement of the class action complaint quotes the Bengals' website, which praises the Ben-Gals for playing a "major role in the Bengals organization year after year."⁴³ The website also notes the Ben-Gals spend "countless hours practicing, exercising, and volunteering" and are "involved in many hours per week working for the Bengals organization within the community."⁴⁴ Currently, the Bengals' website states that the Ben-Gals "average several appearances per week during the season, and offseason."⁴⁵

The amended complaint goes on to list in further detail the number of hours and work functions required by the cheerleaders throughout the year. The cheerleaders must attend six to eight hours of mandatory practices each

⁴¹ See Plaintiff's Motion for Conditional Certification and Judicial Notice at 1, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Aug. 6, 2014).

⁴² Settlement Agreement at 3, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Aug. 26, 2015).

⁴³ First Amended Class Action Complaint at 1, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Apr. 28, 2014).

⁴⁴ *Id.* at 1, 2.

⁴⁵ *Cheerleader Appearance Requests*, BENGALS.COM, <https://www.bengals.com/cheerleaders/appearancerequests>, [<https://perma.cc/ZYW7-N6W3>] (on file with the Harvard Law School Library).

week beginning in late May and lasting through December; attend at least ten charity functions per season; and pose for and promote a cheerleaders calendar.⁴⁶ The complaint totaled the cheerleaders' working time at over 300 hours per year, and the Bengals conceded that hours requirement.⁴⁷ The cheerleaders alleged they worked at a wage rate of "at most, \$90 for each home football game at which they cheer."⁴⁸ Though Brenneman worked more than 300 hours for the Bengals and worked ten home games during the 2013 season, she received just \$855 in total for her work.⁴⁹ Brenneman's pay amounted to \$2.85 per hour, while the minimum wage in Ohio at the time was \$7.85 per hour. From a profitability standpoint, the complaint cited a 2003 Forbes article that estimated a cheerleading squad such as the Ben-Gals generates just over \$1,000,000 per season in extra revenue for the Bengals.⁵⁰ The revenue generated by cheerleaders is not subject to the NFL's revenue-sharing scheme. The below-minimum wage payments seem egregious in themselves, and especially so when compared to the profit margin teams generate from keeping their cheerleader costs low.

The complaint also addresses how the Ben-Gals' rulebook limits the cheerleaders' ability to earn compensation. First, the rulebook requires cheerleaders to agree to restrictions on other employment opportunities. Cheerleaders may not teach outside the Bengals organization or perform with another dance group.⁵¹ Further, missing practices or being late for practice often enough will force the cheerleader to forfeit performing for a game.⁵² This punishment is especially damaging when one considers cheerleaders are compensated only for games at which they cheer. Actually, cheerleaders might arrive at the stadium expecting to cheer, but have the opportunity to earn their full wages withheld. Only twenty-four of the thirty Ben-Gals on the squad are selected to cheer during a game.⁵³ The complaint explains that the six cheerleaders not selected must still complete the pre-game requirements.⁵⁴ These include a required carpool meet-up

⁴⁶ See First Amended Class Action Complaint at 2, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Apr. 28, 2014).

⁴⁷ See *id.*

⁴⁸ *Id.*

⁴⁹ See *id.*

⁵⁰ See *id.* at 5 (citing Rob Wherry), *Pom-Poms and Profits*, FORBES, Sep. 15, 2003, available at https://www.forbes.com/free_forbes/2003/0915/084.html, [<https://perma.cc/UFM3-R739>].

⁵¹ First Amended Class Action Complaint at 5, 6, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Apr. 28, 2014).

⁵² *Id.* at 6.

⁵³ *Id.* at 8

⁵⁴ *Id.*

with the other Ben-Gals up to five hours and fifteen minutes before kick-off in full hair and make-up; typically, two practices before each game; as well as meet-ups, autograph signings, and photos with fans at locations in the stadium selected by the Bengals.⁵⁵ The cheerleaders who were not selected to cheer during the game then spend the first half of the game meeting fans in the stadium's luxury suites.⁵⁶ These cheerleaders may leave after the first half, but are "encouraged to stay and help with on-field activities."⁵⁷ These cheerleaders earn \$45⁵⁸—half of the full \$90 they would earn if they were selected to cheer during the game. On typical 1:00 PM game days on which she cheered, Brenneman met up with the other cheerleaders for a required carpool to the stadium at 7:45 AM and left the stadium at 5:00 PM.⁵⁹ For those eight hours and fifteen minutes, Brenneman and the cheerleaders completed all of the required activities outlined above and earned \$90. Over the eight months Brenneman worked as a Ben-Gal, she was paid only twice.⁶⁰ She received her first payment twenty-two weeks after her first practice and almost ten weeks after her first home game and her last payment the same month she resigned.

The cheerleaders' rulebook also contained a section regarding "Attitude and Behavior."⁶¹ The rulebook told cheerleaders they would be benched or dismissed if they displayed "even the slightest degree" of insubordination.⁶² Under "authority," Ben-Gals were told there is "ABSOLUTELY NO ARGUING OR QUESTIONING THE PERSON IN AUTHORITY!!!"⁶³ Brenneman's complaint did not contain any allegations or claims regarding these rulebook provisions. Ultimately, Brenneman's complaint included claims for denial of minimum wage under FLSA, willful violation of FLSA, denial of minimum wage under the Ohio Constitution, denial of minimum wage under the Ohio minimum wage law, unjust enrichment, failure to pay semi-monthly wages, and failure to maintain wage and hour records.

⁵⁵ *Id.*

⁵⁶ *See id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *See id.* at 8–9.

⁶⁰ *See* Plaintiff's Motion for Conditional Certification and Judicial Notice at 9, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Apr. 28, 2014); *see also* First Amended Class Action Complaint, *supra* note 44.

⁶¹ First Amended Class Action Complaint at 9, *Brenneman v. Cincinnati Bengals, Inc.* No. 1:14-cv-136 (S.D. Ohio Apr. 28, 2014).

⁶² *Id.*

⁶³ *Id.*

In a New York Times op-ed, Laura Vikmanis, a former Bengals cheerleader, also recounted some of the rules contained in the nine single-spaced-page rulebook. Vikmanis recalls that the only time a cheerleader could miss practice without penalty was for her own wedding.⁶⁴ The rulebook also contained restrictions regarding the cheerleaders' weight. When Vikmanis cheered in 2009, any cheerleader more than three pounds over her goal weight was penalized by not cheering at the next game.⁶⁵ Again, this punishment is especially severe when one considers the cheerleaders' pay at the time was tied to the number of games cheered. Vikmanis earned \$75 per game.⁶⁶ Vikmanis notes that this rule was changed after Brenneman's lawsuit, but the director and coaches can still decide to bench a cheerleader from games based on "a cheerleader's look."⁶⁷ Regarding wardrobe, the rules seem similarly harsh and disempowering. Practice wardrobe was strictly mandated: the cheerleaders were to wear sports bras, short shorts, pantyhose underneath the shorts, and sneakers with socks.⁶⁸ Some cheerleaders were uncomfortable with the rule that they were not allowed to wear "panties. . . under practice clothes or uniform."⁶⁹ Cheerleaders did not even own their own uniforms – they were required to pay a \$100 rental fee, refundable only if the uniform was returned in good condition.⁷⁰ Wardrobe rules were not confined to practices or game days. Cheerleaders faced rules regarding wardrobe on days off as well. Cheerleaders were prohibited from wearing t-shirts that showed their bellies, belly-button rings, body piercings, and glitter.⁷¹ Even on off-days, cheerleaders were expected to wear makeup and have "well-groomed hair."⁷² While it is not unusual for employee rulebooks to contain uniform or grooming expectations, the rules Vikmanis describes impose a number of strict requirements and traditional roles on the cheerleaders.

In August 2015, the Bengals and Brenneman settled Brenneman's lawsuit.⁷³ Though they denied any wrongdoing, the Bengals agreed to pay each

⁶⁴ Laura Vikmanis and Amy Sohn, *Little to Cheer About*, THE NEW YORK TIMES, April 12, 2018, available at <https://www.nytimes.com/2018/04/12/opinion/cheer-leading-nfl-gender-discrimination.html>, [https://perma.cc/8TXC-4ZZ5].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *See id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *See id.*

⁷³ The settlement agreement also settled claims related to wages earned by Bengals during outside event appearances for which they were paid through a third-

class member \$2,500 per season worked.⁷⁴ Since the class members worked a total of 102 seasons, the Bengals owed the class \$255,000 in wages. The Bengals also owed Brenneman \$5,000 for her role as named plaintiff and class representative and her attorney's fees as well.⁷⁵ Finally, the settlement agreement notes that after Brenneman filed her lawsuit, "the pay structure for the Ben-Gals was changed to include additional payments by the Bengals."⁷⁶

2. Tampa Bay Buccaneers Cheerleaders Settle Class-Action Lawsuit for Unpaid Minimum Wages

Shortly after Brenneman filed her complaint against her employer, cheerleaders for the Tampa Bay Buccaneers filed a similar lawsuit against their NFL team-employer. Manouchcar Pierre-Val acted as the named plaintiff and filed her amended complaint in June 2014. While discussing her decision to file a class action lawsuit, Pierre-Val echoed the hesitations Brenneman's lawyer voiced regarding upsetting hometown fans. Pierre-Val stated she struggled with filing the lawsuit, because she "didn't know how people were going to react, especially people I cheered for. . . it was hard to move forward, especially once I got all the backlash from other people."⁷⁷ Ultimately though, she had discussed the compensation issues with fellow cheerleaders, so she wasn't surprised she had the will to file the lawsuit.⁷⁸ Further, she felt she "had a diligence to do what's right."⁷⁹ Once she filed the lawsuit, Pierre-Val received "a lot of negativity, a lot of backlash" from "people insinuat[ing] that [she] was doing it more for a come-up or financial gain"; at the same time however, she received support from "the community and the cheerleaders."⁸⁰ Though her fellow cheerleaders may have expected such a lawsuit, Pierre-Val certainly faced backlash from the Tampa

party company called 1 Cheer. The sections related to that claim are not included in this analysis for clarity, as well as their lack of consequence on the claims addressed.

⁷⁴ Settlement Agreement at 7, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Aug. 26, 2015); *see also* Redford, *supra* note 2.

⁷⁵ Settlement Agreement at 9, *Brenneman v. Cincinnati Bengals, Inc.*, No. 1:14-cv-136 (S.D. Ohio Aug. 26, 2015).

⁷⁶ *Id.*

⁷⁷ Tony Marrero, *Former Bucs cheerleader who filed labor lawsuit talks about new ventures*, TAMPA BAY TIMES, Sep. 23, 2016, <https://www.tampabay.com/news/humaninterest/sunday-conversation-cheerleader-in-bucs-suit-now-pursues-nursing/2294716>, [https://perma.cc/A45P-NT47] (on file with the Harvard Law School Library).

⁷⁸ *See id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

Bay community. Ultimately though, many of her fellow cheerleaders supported her enough to join the lawsuit.

The final class included Pierre-Val and roughly 90 other then-current and former Buccaneers cheerleaders.⁸¹ Pierre-Val and the class sued for recovery of minimum wages under FLSA and under Florida minimum wage law.⁸² Like Brenneman's complaint, Pierre-Val's complaint cites the Buccaneer's website to demonstrate that the team recognizes the number of hours cheerleaders spend working for the team. The complaint quotes the Buccaneers' website as saying, "as a Tampa Bay Buccaneers Cheerleader, the ladies are consistently busy rehearsing, performing, and volunteering for community events and appearances. The squad makes approximately 300 community appearances every year for both non-profit organizations and corporate events."⁸³ The complaint also lists a number of the cheerleaders' work requirements for which they were uncompensated, such as attending at least four to fifteen hours of practice each week, arriving approximately four hours before home game kick-off times, and performing at least forty hours of community appearances.⁸⁴ For all of these requirements, the cheerleaders were only paid a flat \$100 compensation for each home game, and "limited wages" for corporate event appearances.⁸⁵ Therefore, the cheerleaders were not compensated for mandatory practices, "non-profit community events, cheer clinics, [and] photo-shoots" among other work.⁸⁶ The complaint alleged that this payment scheme deprived the cheerleaders of federal and state minimum wages.

In response to Pierre-Val's complaint, the Buccaneers' answer denied all liability.⁸⁷ In September 2014, the Buccaneers and the plaintiffs participated in a full-day mediation. When the mediation resulted in an impasse, the Buccaneers and the plaintiffs participated in three half-day conferences between September and December 2014 to negotiate a settlement.⁸⁸ On December 23, 2014, the two parties agreed to settle the class-action lawsuit for

⁸¹ *See id.*

⁸² Amended Class/Collective Action Complaint and Demand for Jury Trial at 1, *Pierre-Val v. Buccaneers Limited Partnership*, No. 8:14-cv-1182-T-33EAJ (M.D. Fla. Jun. 3, 2014).

⁸³ *Id.*

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *Id.*

⁸⁷ *See* Plaintiffs' and Class Counsels' Supplemental Unopposed Motion for Award of Attorney's Fees and Costs and Incorporated Memorandum of Law at 5, *Pierre-Val v. Buccaneers Limited Partnership*, No. 8:14-cv-1182-T-33EAJ (M.D. Fla. Oct. 15, 2015).

⁸⁸ *See id.*

\$825,000.⁸⁹ Pierre-Val characterized the Buccaneers' decision to settle as "the right thing to do" and stated she was satisfied with the settlement agreement.⁹⁰ While reflecting on fair pay for an NFL cheerleader, Pierre-Val focused on the amount of time spent performing or preparing for work duties. She found her role as a cheerleader was a second full-time job.⁹¹ While working as a Buccaneers cheerleader between April 2012 and March 2013, Pierre-Val also maintained a full-time job as a registered nurse.⁹² Pierre-Val recounted that cheerleaders practiced at home, took hours to get ready for cheerleading, and spent eight hours at the stadium each game day.⁹³ Given the amount of work and public relations efforts the cheerleaders perform for the Buccaneers, Pierre-Val felt cheerleaders deserve salaries, just like other staff members.⁹⁴ Though the Buccaneers continued to deny wrongdoing, at least one of the cheerleaders, Pierre-Val, was satisfied with the lawsuit's outcome.

3. Various Other Teams Face Unpaid Wages Claims, and Settle in Similar Fashion to the Bengals and Buccaneers

a) *New York Jets*

In January 2016, the New York Jets settled a class-action lawsuit brought against the team by a class of fifty-two cheerleaders. The cheerleaders, known at the time as "The Flight Crew" filed their lawsuit in New Jersey Superior Court in August 2014,⁹⁵ two months after Pierre-Val filed her amended complaint, and four months after Brenneman's amended complaint. Just like the Bengals' and Buccaneers' cheerleaders, the Jets' cheer-

⁸⁹ See *id.*

⁹⁰ Marrero, *supra* note 78.

⁹¹ See *id.*

⁹² See Amended Class/Collective Action Complaint and Demand for Jury Trial at 1, *Pierre-Val v. Buccaneers Limited Partnership*, No. 8:14-cv-1182-T-33EAJ (M.D. Fla. Jun. 3, 2014); see also Marissa Payne, *Tampa Bay Buccaneers cheerleaders get \$825,000 in wage lawsuit settlement*, THE WASHINGTON POST, Mar. 7, 2015, available at https://www.washingtonpost.com/news/early-lead/wp/2015/03/07/tampa-bay-buccaneers-cheerleaders-get-825000-in-wage-lawsuit-settlement/?utm_term=.e37dbbbd9364, [https://perma.cc/7VU2-MVK6].

⁹³ See Marrero, *supra* note 78.

⁹⁴ See *id.*

⁹⁵ See John C. Ensslin, *Jets to pay \$324,000 to cheerleaders to settle lawsuit over wages*, NORTHJERSEY.COM, Jan. 26, 2016, <https://www.northjersey.com/story/sports/nfl/jets/2016/01/26/jets-to-pay-324000-to-cheerleaders-to-settle-lawsuit-over-wages/94423508/>, [https://perma.cc/92B4-53VX] (on file with the Harvard Law School Library).

leaders claimed that the provided uniforms and flat \$150 wage they were paid per game did not adequately compensate them for the amount of hours they spent practicing and learning routines, or performing other work as cheerleaders.⁹⁶ The cheerleaders again claimed their compensation did not amount to minimum wage.⁹⁷ And just as in the Bengals and Buccaneers cases, the Jets cheerleaders worried about community backlash from their claim. One of the cheerleader's lawyers explained that the women were not named in the lawsuit to protect them from repercussions from their suit, including potential stalkers.⁹⁸ The Jets cheerleaders also claimed they were not reimbursed for the costs associated with "conforming to the image required of the cheerleading squad," such as hair and make-up expenses.⁹⁹ Though the specifics of their claims and arguments differ, the Jets cheerleaders' claims mirror the earlier Bengals and Buccaneers cheerleaders' claims in several notable aspects.

The Jets cheerleaders' lawsuit also ended in similar fashion. The Jets and cheerleaders settled the lawsuit for \$324,000. Depending on if the individual cheerleaders worked one or two seasons and whether they participated in the two seasons' cheerleader calendars, each plaintiff received between \$2,559 and \$5,913.¹⁰⁰ According to a statement released by the Jets after the parties reached an agreement, the Jets continued to deny any wrongdoing,¹⁰¹ much like the Bengals and Buccaneers.

In January 2016, New Jersey Senator Loretta Weinberg sponsored Bill Number 819 to New Jersey's 217th Legislature. The bill proposed extending employment benefits and protections to cheerleaders for professional sports teams.¹⁰² To accomplish this goal, the bill would require professional sports team to deem their cheerleaders employees.¹⁰³ This classification would ensure New Jersey labor laws that govern "minimum wage and hours, the time and mode of payment, workers' compensation, unemployment compensation, temporary disability benefits, family temporary disability leave, civil rights protections, and the gross income tax" protect cheerleaders.¹⁰⁴ Officially, the bill was introduced in response to claims brought by cheerleaders throughout the United States that they are ex-

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ *See id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *See id.*

¹⁰² *See* N.J. Senate Bill S819, 217th Leg., 2016 Sess. (N.J. 2016).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

ploited when teams require that they be designated as independent contractors.¹⁰⁵ Senator Weinberg hoped the bill would “start calling attention to how these women. . .are underpaid and not protected.”¹⁰⁶ The bill gained bipartisan support, but later died in the Senate Labor Committee.¹⁰⁷ Despite the lack of legislative success, the Jets cheerleaders’ claim against their team represents another instance in which cheerleaders succeeded in court by fairly negotiating a settlement agreement with their team.

b) Oakland Raiders

Even before Brenneman first filed her complaint against the Bengals, a class of cheerleaders from the then-Oakland Raiders filed a class-action lawsuit against their employer. The cheerleaders, known as the Raiderettes, filed a class action lawsuit in January 2014 in Alameda County Superior Court against the Oakland Raiders. The class, which represented more than 100 current and former Raiders cheerleaders, alleged many of the same employment law violations later alleged by the classes discussed above. The Raiders allegedly paid the cheerleaders less than minimum wage (less than \$5 per hour), did not pay overtime, required the cheerleaders to pay for expenses the team’s employment rules required them to incur, and did not pay the cheerleaders as frequently as required by law.¹⁰⁸ Specifically, the cheerleaders received only a single paycheck for \$1,250 per season from the team, nine months after their first practices.¹⁰⁹ Additionally, the cheerleaders claimed the team did not provide them with meal or rest breaks as required during work shifts lasting longer than eight hours.¹¹⁰ The team also deducted pay for minor rule infractions, such as forgetting to bring the correct set of pom-poms to practices, forgetting the correct workout clothes, or forgetting a yoga-mat.¹¹¹ The cheerleaders’ employment contracts required them to attend a number of mandatory events for which they received no compensation, including practices two to three times per week, fittings, meetings, workouts, and photo sessions, including a photo session for a swimsuit calendar.¹¹²

¹⁰⁵ *See id.*

¹⁰⁶ Ensslin, *supra* note 96.

¹⁰⁷ *See* N.J. Senate Bill S819, 217th Leg., 2016 Sess. (N.J. 2016).

¹⁰⁸ *See* Robin Abcarian, *Oakland Raiders break all kinds of labor laws, cheerleader suit says*, LOS ANGELES TIMES, Jan. 24, 2014, *available at* <http://www.latimes.com/local/abcarian/la-me-ra-20140124-story.html#page=1>, [<https://perma.cc/4QUK-ES2U>].

¹⁰⁹ *See id.*

¹¹⁰ *See id.*

¹¹¹ *See id.*

¹¹² *Id.*

The suit alleged each cheerleader was required to attend ten charity, corporate, or community events per season. However, if a cheerleader could not attend their assigned event, they were contractually forbidden from asking another cheerleader to cover their event assignment.¹¹³ Further, if a cheerleader arrived to the event less than fifteen minutes before its start time, she was required to attend an additional event.¹¹⁴ If a cheerleader did not attend her required amount of such events, she was punished not through docked pay, but by being required to try-out for her job again: the cheerleader must undergo preliminary cheerleader auditions for the next season.¹¹⁵ Finally, the Raiders also dictated certain grooming requirements for their cheerleaders. The team required each cheerleader use a hairstylist selected by the team.¹¹⁶ The team also required the cheerleaders to wear a selected hair color and style.¹¹⁷ Perhaps not surprisingly, the cheerleaders themselves also paid to fulfill these grooming requirements. Cheerleaders could also face pay deductions for wearing the wrong color nail polish.¹¹⁸ Similar to the lawsuits above, the cheerleaders' attorneys (as well as the Raiders) chose to withhold the plaintiff-cheerleaders' last names from the lawsuit to protect them from unwanted attention.¹¹⁹

The cheerleaders' lawsuit focused on employment and labor law violations. However, it is worth noting here a few of the Raiders' rulebooks provisions unrelated to work requirements or pay. The rulebook includes instructions for the cheerleaders to avoid married men in the front office and not date players.¹²⁰ Cheerleaders are also instructed to "avoid parties where their 'reputations' could be 'ruined' if they were sexually assaulted by players."¹²¹ These rulebook provisions can be characterized as patronizing and misogynistic, especially within the context of a contract that required cheer-

¹¹³ *See id.*

¹¹⁴ *See id.*

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See* Robin Abcarian, *Cheerleaders' wage-theft lawsuit to cost Oakland Raiders \$1.25 million*, LOS ANGELES TIMES, Sep. 4, 2014, *available at* <http://www.latimes.com/local/abcarian/la-me-ra-raiders-settle-cheerleader-lawsuit-20140904-column.html>, [<https://perma.cc/RLC4-JBE3>].

¹¹⁹ *See* Abcarian, *supra* note 109.

¹²⁰ Robin Abcarian, *An extraordinary win for the Raiders cheerleaders*, LOS ANGELES TIMES, Jul. 11, 2014, *available at* <http://www.latimes.com/local/abcarian/la-me-ra-a-major-victory-for-nfl-cheerleaders-20140709-column.html>, [<https://perma.cc/8GCF-FRDD>].

¹²¹ *Id.*

leaders to sit for a swimsuit calendar photo shoot for no additional compensation.

About a week after the lawsuit was filed, the Raiders had no comment.¹²² However, in July, the Raiders provided their cheerleaders with a new contract. The new contract provided the cheerleaders with a \$9 per hour wage, plus overtime.¹²³ Under the new contract, the cheerleaders would also be reimbursed for some of the mandatory expenses discussed above.¹²⁴ The cheerleaders' total expected compensation rose from the single check of \$1,250 to \$3,200 per season.¹²⁵ The cheerleaders would be paid twice each month going forward.¹²⁶ Under the new contract, the Raiders would no longer deduct wages for the minor rule infractions addressed above. After the team announced the new contract, a few fellow cheerleaders texted Lacy, the lawsuit's named plaintiff, that the new contract was "awesome."¹²⁷ Still, Lacy doubted she would ever be truly thanked for her lawsuit.¹²⁸ Many of her fellow cheerleaders shunned Lacy after she filed the lawsuit.¹²⁹ Caitlin, a different Raiders cheerleader who filed a separate lawsuit while still working as a cheerleader, similarly felt that even her fellow cheerleaders did not appreciate her action against the team.¹³⁰ Regardless of their individual reactions towards the lawsuits, the cheerleaders benefitted from the lawsuits' generating enough pressure to force the Raiders to provide a fairer contract, compliant with employment and labor laws, for its cheerleaders.

In September 2014, the Raiders and the cheerleaders settled the lawsuit for \$1.25 million. The settlement agreement came as the result of mediation between the parties and required the team pay between \$2,500 and \$6,000 to any cheerleader who worked for the team since the 2010-2011 season, depending on the seasons worked.¹³¹ Lacy and a fellow cheerleader, Sarah, who joined the lawsuit after its original filing, each received an additional \$10,000 for bringing the lawsuit.¹³² Both Lacy and Leslie Levy, one of the attorneys representing the cheerleaders, felt the settlement agreement was fair. Levy noted the agreement demonstrated to teams that they are "not

¹²² Abcarian, *supra* note 109.

¹²³ Abcarian, *supra* note 121.

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See id.*

¹³¹ Abcarian, *supra* note 119.

¹³² *See id.*

above the law.”¹³³ Indeed, the Raiders cheerleaders’ lawsuit likely provided an impetus and model for the lawsuits against the Bengals, Buccaneers, and Jets discussed above.¹³⁴

C. Claims Brought in the Midst of the #MeToo Movement Consist of Discrimination and Harassment Claims

In January 2017, Bailey Davis posted a photo of herself to her private Instagram account. The New Orleans Saints, Davis’ employer, fired Davis after seeing the photo posted of Davis in a one-piece outfit.¹³⁵ The Saints claimed that Davis’ action in posting the photo violated the employment rules governing Davis and the rest of the Saints’ cheerleaders that prohibit cheerleaders from appearing nude, seminude, or in lingerie.¹³⁶ The team also questioned whether Davis had violated another rule when she attended a party with Saints players; however, the team admitted to Davis that it did not have proof she was at the party in question.¹³⁷ Though Davis denied violating either of these rules and had set her Instagram according to the team’s required privacy settings, the Saints fired her after three seasons with the team.¹³⁸ In response, and in the middle of the viral #MeToo movement¹³⁹, Davis filed a complaint with the Equal Employment Opportunity Commission (EEOC). Davis’ EEOC complaint alleged that the Saints’ rules for its cheerleaders differed from its rules for its players and that the rules for cheerleaders reflect outdated views towards women.¹⁴⁰ Davis’ EEOC claim is based on the NFL’s personal conduct policy, which prohibits unlawful employment discrimination based on sex.¹⁴¹ Davis argues cheerleaders should be considered NFL personnel for purposes of coverage under this policy and

¹³³ *Id.*

¹³⁴ A similar lawsuit against the Buffalo Bills as well as Caitlin’s lawsuit against the Raiders and the NFL were also pending at the time of the settlement. *See id.*

¹³⁵ *See* Ken Belson, *How an Instagram Post Led to an N.F.L. Cheerleader’s Discrimination Case*, THE NEW YORK TIMES, Mar. 25, 2018, *available at* <https://www.nytimes.com/2018/03/25/sports/saints-cheerleader.html>, [<https://perma.cc/K8AT-92AP>].

¹³⁶ *See id.*

¹³⁷ *See id.*

¹³⁸ *See id.*

¹³⁹ For an explanation of the #MeToo movement, *see* <https://metoomvmt.org/about/>. For a timeline of the viral #MeToo movement inspired by Tarana Burke’s work, *see* Christen A. Johnson & KT Hawbaker, *#MeToo: A timeline of events*, CHICAGO TRIBUNE, Oct. 11, 2018, *available at* <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htlmstory.html>, [<https://perma.cc/Y7EM-REPY>].

¹⁴⁰ *See* Belson, *supra* note 136.

¹⁴¹ *See id.*

that the cheerleaders' rules violate the policy because they apply only to women.¹⁴²

The New York Times compiled a number of rules and regulations that demonstrate the different standards the Saints require of cheerleaders and players. According to the *New York Times*' sources, the Saints' anti-fraternization policy "requires cheerleaders to avoid [in person or online] contact with players."¹⁴³ However, players are not required to do the same toward cheerleaders. For example, cheerleaders may not dine in the same restaurant as a player.¹⁴⁴ If a cheerleader enters a restaurant and a player is already in that restaurant, the cheerleader must leave; in fact, if a player enters a restaurant after a cheerleader, she has the duty to leave.¹⁴⁵ Cheerleaders may not speak to players in any detail.¹⁴⁶ According to Davis' mother, Lora Davis, a long-time choreographer for the Saints' cheerleading squad, the cheerleaders are told that "anything beyond 'hello' and 'great game' is too personal."¹⁴⁷ The cheerleaders also must follow various rules regarding social media. Cheerleaders may not post photos of themselves wearing Saints gear, must maintain certain privacy settings, and must block players from following them.¹⁴⁸ Again, players do not have any of these restrictions on their social media. The Saints maintain their rules are in place in order to protect women from unwanted attention from players.¹⁴⁹ Still, the lopsided rules leave one to question who the restrictions truly protect, and who they burden.

Kristin Ware, a cheerleader for the Miami Dolphins, also felt as if her employment rules treated her differently than her peers. Ware was a cheerleader for the Dolphins for three seasons, until spring 2017. In April 2018, Ware filed a complaint with the Florida Commission on Human Relations claiming she was subjected to a hostile work environment.¹⁵⁰ The complaint alleges Ware was discriminated against because of her gender and religion.¹⁵¹ Before her final season with the team, Ware posted a photo on social media of herself being baptized.¹⁵² Ware contends that after she posted the

¹⁴² *See id.*

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *Id.*

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *See* John Branch, *Another Former N.F.L. Cheerleader Files a Complaint*, THE NEW YORK TIMES, Apr. 12, 2018, available at <https://www.nytimes.com/2018/04/12/sports/football/nfl-cheerleaders.html>, [https://perma.cc/6UC3-78CW].

¹⁵¹ *See id.*

¹⁵² *Id.*

photo, she became “a target of discipline, ridicule, harassment and abuse” from the Dolphins’ cheerleading director, cheerleading coaches, and cheerleading representatives.¹⁵³ Ware also recounted that cheerleading coaches mocked her after learning she was a virgin due to her religious beliefs.¹⁵⁴ At a fashion show where cheerleaders modeled bikinis, Ware was dressed in angel wings, a choice made by the cheerleading officials that she saw as mocking her virginity.¹⁵⁵ Ware’s first step was to complain to the Dolphins’ human resources department.¹⁵⁶

When her coaches continued to treat her poorly, she filed her complaint with the Florida Commission on Human Relations. Ware’s complaint states that she was treated differently than players who similarly expressed their faith publicly, such as by praying with opposing players on the field after games or posting religious-themed posts on social media.¹⁵⁷ Ware’s complaint requested monetary damages, but focused on her request that the Dolphins, the NFL, and all NFL teams update their employment policies to treat cheerleaders and players equally, and to stop intimidating cheerleaders for expressing their religious beliefs.¹⁵⁸ Ware demanded arbitration and a hearing with NFL Commissioner, Roger Goodell.¹⁵⁹ In response to Ware’s complaint, the Dolphins released a statement confirming they do not discriminate based on gender, race, or religion, and they are committed to a “positive work environment.”¹⁶⁰ The NFL’s spokesman issued a similar statement confirming the NFL supports fair employment practices and believes cheerleaders have the right to work in a harassment and discrimination-free workplace.¹⁶¹ The statement asserted the NFL would work with the teams “in sharing best practices and employment-related processes that will support club cheerleading squads within an appropriate and supportive workplace.”¹⁶²

In response to the NFL’s statement, Ware and Davis’ lawyer, Sara Blackwell, came up with a unique settlement proposal: Blackwell proposed settling both women’s complaints against the NFL and the teams for just \$1

¹⁵³ *See id.*

¹⁵⁴ *See id.*

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*

¹⁵⁷ *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *Id.*

¹⁶¹ *See id.*

¹⁶² *See id.*

in exchange for a “four-hour, ‘good faith’ meeting.”¹⁶³ The proposed meeting was to be between Goodell, league lawyers, Ware, Davis, and at least two additional NFL cheerleaders from different teams in order to create binding rules for cheerleaders for all NFL teams, including non-retaliation requirements.¹⁶⁴ The proposal asserted that the league should agree to the meeting if it is sincerely committed to the aspirations contained in its previously released statement summarized above.¹⁶⁵

By the time the NFL received Blackwell’s request for a meeting, perhaps it realized it could no longer ignore the cheerleaders’ employment conditions. In the weeks surrounding Ware’s complaint, *The New York Times* published a report based on interviews with dozens of professional cheerleaders. The report detailed numerous accounts of cheerleaders being exposed to grotesque employment conditions and sexual harassment while on the job. For example, a former Redskins cheerleader recounted receiving a specific assignment from her team. When she and five fellow cheerleaders arrived at the address the Redskins provided, they realized they had arrived at a fan’s private home.¹⁶⁶ Inside, a group of seven men waited for the cheerleaders. The homeowner asked the cheerleaders which of them were single and which were married, before the cheerleaders performed a two-minute dance routine in the home’s basement.¹⁶⁷ The cheerleaders declined the men’s invitation to drink alcohol with them and passed the afternoon awkwardly mingling with the men or walking around the home while the men watched an NFL game.¹⁶⁸

The report detailed other instances of the Redskins sending cheerleaders on similarly uncomfortable employment assignments. An interview with five other Redskins cheerleaders uncovered details of a 2013 team calendar photoshoot trip to Costa Rica. When the cheerleaders first arrived at the resort, Redskins officials took their passports.¹⁶⁹ Some cheerleaders were forced to pose topless or in nothing but body paint for the photo shoots

¹⁶³ See John Branch, *Former N.F.L. Cheerleaders Offer to Settle for \$1 and a Meeting With Goodell*, THE NEW YORK TIMES, Apr. 24, 2018, available at <https://www.nytimes.com/2018/04/24/sports/football/nfl-cheerleaders.html>, [https://perma.cc/5WK7-7XVP].

¹⁶⁴ See *id.*

¹⁶⁵ See *id.*

¹⁶⁶ See Macur, *supra* note 3.

¹⁶⁷ See *id.*

¹⁶⁸ See *id.*

¹⁶⁹ See Juliet Macur, *Washington Redskins Cheerleaders Describe Topless Photo Shoot and Uneasy Night Out*, THE NEW YORK TIMES, May 2, 2018, available at <https://www.nytimes.com/2018/05/02/sports/redskins-cheerleaders-nfl.html>, [https://perma.cc/94QJ-STPJ].

while being viewed up-close by a group of all-male sponsors and ticket holders.¹⁷⁰ One evening on the trip ended with nine of the cheerleaders being told they had been selected by the male sponsors to be their “personal escorts at a nightclub.”¹⁷¹ The cheerleaders felt it was mandatory to participate, even after the end of a fourteen-hour workday.¹⁷²

The Redskins cheerleaders’ director and choreographer denied that the trip to the nightclub was mandatory or that sponsors selected the women to attend.¹⁷³ However, the *New York Times* reports detailed reports from other teams’ cheerleaders of similarly shocking employment conditions. A former Cowboys cheerleader recalled a visiting fan shouting at her, “I hope you get raped!” while she and her squad waved and smiled at fans.¹⁷⁴ The cheerleader explained that once fans get drunk and “yell things,” the cheerleaders are supposed to “take it” because it’s “part of the job.”¹⁷⁵ Some cheerleaders noted that teams are aware of how cheerleaders are treated, but instead of acting to prevent the harassment, they teach cheerleaders to reply politely.¹⁷⁶ The Cowboys taught cheerleaders how to respond to offensive comments or inappropriate touching while on the job. The cheerleaders were taught to never be mean, to not upset fans, and to be courteous and sweet by addressing inappropriate conduct with such responses as, “that’s not very nice.”¹⁷⁷ One Cowboys cheerleader found that if cheerleaders objected to such behavior, they would be dismissed.¹⁷⁸

Faced with mounting public pressure resulting from these detailed accounts of employment conditions, as well as Ware and Davis’s claims, perhaps the NFL felt action was necessary to supplement its statement. The NFL agreed to meet with Blackwell to discuss improving workplace conditions for cheerleaders, but did not agree to do so in exchange for a settlement.¹⁷⁹ The meeting was held in August 2017 as part of the NFL’s “renewed effort [during] this offseason” to address cheerleaders’ employ-

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ See Macur, *supra* note 3.

¹⁷⁵ See *id.*

¹⁷⁶ See *id.*

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ See Chelsea Howard, *NFL agrees to meet with lawyer of former cheerleaders to discuss workplace discrimination*, SPORTING NEWS, May 5, 2018, <http://www.sportingnews.com/us/nfl/news/nfl-cheerleaders-redskins-saints-bailey-davis-kristan-ware-roger-goodell-discrimination-racy-photo/qdf2v83yniav1uq3wt6bz4ps0>, [https://perma.cc/7AJL-KBLZ] (on file with the Harvard Law School Library).

ment conditions.¹⁸⁰ Blackwell met with two NFL lawyers and the NFL's Senior Vice President of Social Responsibility. While she acknowledged the NFL does not have control over team-controlled employment issues, she found the meeting "extremely productive" and reported the NFL representatives were interested, supportive, and sought her recommendations.¹⁸¹ The NFL's statement noted they similarly found the meeting productive and they supported Blackwell's dedication to cheerleaders' employment conditions.¹⁸² It is unclear whether this meeting has resulted in improved employment conditions for cheerleaders thus far. However, the meeting can at least serve as the NFL's acknowledgment of the issue and can hopefully act as an impetus for positive change.

III. CONCLUSION

In 1995, cheerleaders for the Buffalo Bills took steps to ensure fair and legal employment conditions for themselves. For the first time in NFL history, the Buffalo cheerleaders unionized its team's squad.¹⁸³ The union effort demanded equal pay and better treatment, and was motivated by cheerleaders who were "tired of being used and abused."¹⁸⁴ Unfortunately, the union was short-lived, as the cheerleading squad lost its sponsorship and funding the year after it unionized.¹⁸⁵ A different sponsor agreed to fill in, but only after the squad complied with its condition they de-unionize.¹⁸⁶ Following the flood of unpaid wages claims in 2014 and 2015 discussed above, Claudia Harke's article argued the Raiders cheerleaders' claims could spur a conceptual change in terms of cheerleaders' employment status such that cheerleaders could protect themselves in the workplace through unioni-

¹⁸⁰ See A.J. Perez, *NFL officials meet with lawyer seeking to improve cheerleader work conditions*, USA TODAY, Aug. 30, 2018, available at <https://www.usatoday.com/story/sports/nfl/2018/08/30/nfl-cheerleaders-lawyer-discuss-discrimination-working-conditions/1150457002/>, [<https://perma.cc/6WBS-F94S>].

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ See Christina Floozy, *NFL Cheerleaders Need a Union*, VICE, Aug. 20, 2018, https://www.vice.com/en_us/article/8xb7qz/nfl-cheerleaders-need-a-union, [<https://perma.cc/54VK-BNLQ>] (on file with the Harvard Law School Library).

¹⁸⁴ Michelle Ruiz, *Sex on the Sidelines: How the N.F.L. Made a Game of Exploiting Cheerleaders*, VANITY FAIR, Oct. 4, 2018, available at <https://www.vanityfair.com/style/2018/10/nfl-cheerleaders-history-scandal>, [<https://perma.cc/92NA-K3V8>].

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

zation.¹⁸⁷ And following Ware and Davis' recent lawsuits and cheerleaders' reports of harassment in the workplace, Christina Floozy wrote an article bemoaning the inadequacies of piecemeal individual and impact litigation, and suggesting a league-wide union could remedy the unfair employment practices cheerleaders face.¹⁸⁸ Despite the arguments for unionization, there is no perceptible evidence that current cheerleaders are seriously considering a league-wide unionization drive. For now, it seems that the meeting between the NFL and Blackwell, as well as the public's renewed attention to cheerleaders' employment conditions, may serve as cheerleaders' greatest chance at receiving fair and legal employment standards.

¹⁸⁷ See Claudia Harke, *Pom Poms, Pigskin & Jiggle Tests: Is it Time for the National Football League Cheerleaders to Unionize?*, 30 WIS. J.L. GENDER & SOC'Y 157, 184 (Fall 2015).

¹⁸⁸ See Floozy, *supra* note 184.