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Via Email and U.S. Mail

Ryan W. Green, Esq.
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Re: ***United Corporation v. Wadda Charriez***
Civil No. SX-13-cv-152

Dear Attorney Green:

As discussed, I am formally giving notice that Plaintiff/Counter-Defendant United Corporation intends to bring a Rule 11 Motion for Sanctions against Wadda Charriez and you, if, within twenty-one (21) days from receipt of this Notice, you do not dismiss the following the claims brought pursuant to 42 U.S.C..§§ 1983 and 1985(2) in the First Amended Counter-Claim. Please see below my argument in my draft motion to dismiss in support of the request that this claim be withdrawn, in that under no set of circumstances can Defendant Wadda Charriez plead facts meeting each and every element of Clause 2, of the Section 1985 (2)

A. Charriez' § 1985(2) Claim, as alleged in Count I: Violation of 42 U.S.C. § 1983 of her Amended Counter-Claim, Must Be Dismissed Because She Failed to State a Claim Upon Which Relief Can Be Granted.

In Charriez' First Amended Counter-Claim, she "attempts to [re-]arrange her collection of allegations to structure a cause of action under 42 U.S.C. § 1985(2). *Rode v. Dellarciprete*, 845 F.2d 1195, 1205 (3d Cir. 1988). Charriez now contends that under the facts alleged, United Corporation d/b/a Plaza Extra has violated 42 U.S.C. § 1985(2), because she felt intimidated by the Employer's notice to her that it will respond with the evidence that she falsely reported time when she intentionally and repeatedly overstated her hours worked. She also admitted to falsely reporting her correct time. In support of this claim of violation of 42 U.S.C. § 1985(2), Charriez, in her Counter-Claim, recites the following provision:

8. 42 U.S.C. § 1985(2) creates a private right of action for damages against any defendant who does the following:

> (2) Obstructing justice; intimidating party, witness, or juror
>
> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; ....

Because this is not a proceeding in Federal Court, and because moreover Defendant, Counter-Claimant Wadda Charriez has failed to allege that she was a party or witness in a Federal Litigation, the First Amended Counter-Claim fails as a matter of law.

Well established decisional law and binding precedents have repeatedly explained that the first part of 42 U.S.C. § 1985(2) applies only to proceedings in Federal Court, as plainly stated in the Statute. See, *Heffernan v. Hunter*, 189 F.3d 405, 410 (3d Cir. 1999)(noting the "unstructured language" of this statutory provision).

The First Clause of § 1985(2) provides a cause of action based on the intimidation of witnesses **in a federal court action.**" See, *Rode v. Dellarciprete*, 485 F2d 1195, 1206 (3d Cir. 1988). Accepting the allegations in the First Amended Counter-Claim and Third Party Complaint as true and making all reasonable inferences in favor of Defendant Charriez, this Court must find that the Counter-Claimant has not plead sufficient facts showing she is entitled to relief.

Even in Counter-Claimant's Footnote [1] of her Amended Counter-Claim, Charriez points to the U.S. Supreme Court's decision in *Haddle v. Garrison*, 525 U.S. 121, 122 (1998). However, the reliance is misplaces as well as misleading. Charriez ignores that the Court in *Haddle* was construing the first clause of § 1985(2) and that expressly held as to this clause that:

> "The gist of the wrong at which § 1985(2) is directed is not deprivation of property, but intimidation or retaliation against witnesses in *federal-court* proceedings." (emphasis added).

Indeed as the U. S. Supreme Court has long explained, a separate subsection of § 1985(2) proscribes conspiracies that are intended to interfere with the administration of justice in State Courts. See *Rush v. Rutledge*, 460 U.S. 719, 724 (1983).

As it is obvious this lawsuit is not a federal proceeding in Federal Court and Counter-Claimant Wadda Charriez has failed to allege she is a party or witness in a Federal Litigation, her First Amended Counter-Claim fails as a matter of law. Therefore, there are no set of circumstances alleged where Counter-Claimant has shown she is entitled to relief on the facts in this case, under the first Clause, of § 1985(2).

B. Charriez' Amended Counter-Claim is also deficient under the Second Clause of § 1985(2), which applies to State or Territorial Actions, and therefore must be dismissed.

As shown in the First Clause of § 1985(2), which was quoted in Charriez' First Amended Counter-Claim, applies only to Federal Courts and does not provide an avenue for relief on the facts of this case. If, however, Charriez' intent is to rely on the Second Clause of 42 U.S.C. § 1985(2), which applies to State or Territorial proceedings, her reliance would be similarly misplaced as her relying upon the First Clause of § 1985(2). The Second Clause of 42 U.S.C. § 1985(2), provides as follows:

> . . . if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C. § 1985(2) (second clause) (emphasis added).

For Counter-Claimant Charriez to state a claim under the Second Clause of § 1985(2), " a plaintiff must allege four things:

(1) a conspiracy;
(2) motivated by a racial or class-based discriminatory animus designed to deprive, directly or indirectly, an person or class of persons of the equal protection of the laws;
(3) an act of furtherance of the conspiracy; and
(4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States."

In short, there is no evidence or facts to support the allegations in the Second Clause of 1985(2). Upon examination of the allegations of Charriez' First Amended Counter-Claim, show that dismissal is warranted as a matter of law, because Counter-Claimant has alleged no facts in either the original Counter-Claim or the First Amended Counter-Claim, showing there ever was a conspiracy motivated by invidious racial animus designed to deny her equal protection under the law. *See e.g., Davis v. Township of Hillside*, 190 F.3d 167, 171 (3d Cir. 1999)(holding that a claim under § 1985(2): "prohibits conspiracy to obstruct justice with the intent to deny equal protection of the laws" and affirming the district court's dismissal of a claim brought under the statute because the plaintiff did not "allege that the Officers colluded with the requisite 'racial, or ...otherwise class-based, invidiously discriminatory animus[.]' ") (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102-

03, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971); See also, *Brawer v. Horowitz*, 535 F.2d 830, 839 (3d Cir. 1976)), which holds that claims under § 1985(2), which allege conspiracies to interfere with State judicial proceedings must also allege racial or class-based discriminatory animus.)

There are no facts, nor evidence to support or hold up the allegations in Counter-Claimant Wadda Charriez' First Amended Counter-Claim, under 42 U.S.C. § 1985(2), Clause One or Clause Two. In short, there is nothing in Charriez' First Amended Counter-Claim can be even remotely construed as "'plausibly giving rise to an entitlement for relief' " under 42 U.S.C. § 1985(2). Therefore, the Counter-Claimant Wadda Charriez cannot under any circumstances allege a claim under 42 U.S.C. § 1985(2) and this claim should be withdrawn within twenty-one (21) days, or, to reiterate, we will move for Rule 11 Sanctions.

Sincerely yours,

LAW OFFICES OF K. G. CAMERON

K. Glenda Cameron, Esq.

:CLJ