UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KATE LYNN BLATT, Plaintiff, v. CABELA'S RETAIL, INC., Defendant.	:	CASE NO.: 5:14-CV-04822-JLS

PARTIAL MOTION OF DEFENDANT CABELA'S RETAIL, INC.
TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Cabela's Retail, Inc. hereby moves the Court to dismiss Count III (ADA – Disability Discrimination, Failure to Accommodate) and Count IV (ADA – Retaliation) of Plaintiff's First Amended Complaint against Defendant Cabela's Retail, Inc. The grounds in support of this Motion are fully set forth in the accompanying Memorandum of Law, which is incorporated herein by reference.

Respectfully submitted,

FISHER & PHILLIPS LLP

Dated: November 18, 2014

By: s/ Christin Choi

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KATE LYNN BLATT, Plaintiff, v. CABELA'S RETAIL, INC., Defendant.	: : : : : : : : :	CASE NO.: 5:14-CV-04822-JLS

MEMORANDUM OF LAW IN SUPPORT OF THE PARTIAL MOTION OF DEFENDANT CABELA'S RETAIL, INC. TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Cabela's Retail, Inc., by and through its undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby submits the following Memorandum of Law in Support of the Partial Motion of Defendant Cabela's Retail, Inc. to Dismiss Plaintiff's First Amended Complaint for failure to state a claim upon which relief can be granted.

Specifically, Cabela's seeks dismissal of Count III (ADA – Disability Discrimination, Failure to Accommodate) and Count IV (ADA – Retaliation) of Plaintiff's First Amended Complaint and Jury Demand ("Amended Complaint") because Plaintiff has failed to state a claim upon which relief can be granted.

I. BACKGROUND

Plaintiff Kate Lynn Blatt ("Plaintiff") alleges that she was employed by Cabela's from approximately September 17, 2006 until about March 1, 2007. Amended Complaint at ¶ 12. Plaintiff claims that her employment with Cabela's was terminated on or about March 1, 2007 for threatening another Cabela's employee's son during an altercation. Id. at ¶ 34. Plaintiff

further claims that her employment was terminated based on her sex, her actual and/or perceived disability and/or record of impairment, and/or in retaliation for opposing unlawful discrimination in the workplace and requesting a reasonable accommodation for her disability. Id. at ¶¶ 36, 54, 58.

On August 15, 2014, Plaintiff filed a Complaint in this action against Cabela's.[1] On October 22, 2014, Cabela's filed a Partial Motion to Dismiss Plaintiff's Complaint. On November 5, 2014, Plaintiff filed a First Amended Complaint and Jury Demand. In the Amended Complaint, Plaintiff alleges four Counts.[2] In Count III of the Amended Complaint, Plaintiff alleges a claim for "Disability Discrimination, Failure to Accommodate" in violation of the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA"). In Count IV of the Amended Complaint, Plaintiff alleges a claim for "Retaliation" in violation of the ADA.

Cabela's respectfully submits that Plaintiff's claim against Cabela's for "Disability Discrimination, Failure to Accommodate" should be dismissed pursuant to Rule 12(b)(6) of the Federal Rule of Civil Procedure because Plaintiff has failed to allege the existence of a disability under the ADA. Although Plaintiff alleges that she was diagnosed with "Gender Dysphoria, also known as Gender Identity Disorder," Amended Complaint at ¶ 10, gender identity disorder is not a disability pursuant to the ADA. Because gender identity disorder is not a disability under the ADA, Plaintiff's claim for failure to accommodate must also be dismissed. Finally, Plaintiff's claim for and "Retaliation" under the ADA must be dismissed because Plaintiff has failed to identify facts showing that she engaged in protected activity under the ADA or that she requested

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[1] In the Complaint filed on August 15, 2014, Plaintiff alleged eight Counts against Cabela's, including four Counts arising under the Pennsylvania Human Relations Act ("PHRA").

[2] The Amended Complaint does not contain any Counts arising under the PHRA. Counts I and II, in which Plaintiff alleges two claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended, are not the subject of this Motion.

an accommodation for a disability. As a result, Plaintiff's claim for retaliation under the ADA must also be dismissed.

Because Plaintiff has failed to state a claim upon which relief can be granted under the ADA, Plaintiff's claims for disability discrimination, failure to accommodate, and retaliation under the ADA (Counts III and IV) must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. ARGUMENT

A. Legal Standard for Motion to Dismiss

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a court to dismiss all or part of an action based upon a plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In deciding a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all well pleaded factual allegations in the complaint. Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007). In addition, the court must view all facts, and reasonable inferences drawn therefrom, in the light most favorable to the plaintiff. Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 325 (3d Cir. 2001). A court does not, however, have to accept unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations contained in the complaint. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Following such a review, a complaint may be dismissed where the facts pleaded, and the reasonable inferences drawn from such facts, are insufficient to support the relief sought. Morse, 132 F.3d at 906. Thus, Rule 12(b)(6) operates to weed out claims that, as in this case, "are fatally flawed in their legal premises and destined to fail, and thus to spare litigants the burden of unnecessary pretrial and trial activity." Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1160 (Fed. Cir. 1993).

Pursuant to Rule 12(b)(6), a claim can survive a motion to dismiss only if the complaint contains factual allegations sufficient to show that it is plausible (not merely possible) that the plaintiff is entitled to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007). The allegations in the complaint must raise the plaintiff's right to relief above the speculative level. Id. at 555. Twombly requires that a complaint set forth enough factual matter (assumed to be true) to suggest the required elements of the claim exist. Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008).

While detailed factual pleading is not required, a plaintiff still must set forth the "grounds" of his/her entitlement to relief. Fed. R. Civ. P. 8. This "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. The court will not accept as true "unsupported conclusions and unwarranted inferences" or "legal conclusion[s] couched as [] factual allegation[s]." Baraka v. McGreevy, 481 F.3d 187, 195 (3d Cir. 2007), cert. denied, 128 S. Ct. 612 (2007). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 679.

With these principles firmly rooted, it is clear that Plaintiff has failed to state a claim under the ADA because she has failed to allege the existence of a disability pursuant to the ADA, failed to allege facts showing that she engaged in protected activity under the ADA, and failed to allege facts showing that she requested an accommodation for a disability. Therefore, Counts III and IV of the Amended Complaint must be dismissed based upon Plaintiff's failure to state a claim upon which relief can be granted.

B. Plaintiff Fails to State a Claim for Disability Discrimination, Failure to Accommodate, and Retaliation Under the Americans With Disabilities Act.

Plaintiff's alleged claims for disability discrimination, failure to accommodate, and retaliation under the ADA (Counts III and IV of the Amended Complaint) must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

1. Plaintiff Fails to State a Claim for Disability Discrimination.

To state a claim for disability discrimination under the ADA, a plaintiff must allege facts demonstrating the following elements: (1) she is disabled within the meaning of the ADA; (2) she is otherwise qualified for the job with or without reasonable accommodation; and (3) she was subjected to an adverse employment action as a result of discrimination. Seibert v. Lutron Elecs., Civil Action No. 08-5139, 2009 U.S. Dist. LEXIS 110823, at *13 (E.D. Pa. Nov. 30, 2009); Ryans v. Fed. Reserve Bank of Philadelphia, Civil Action No. 11-7154, 2013 U.S. Dist. LEXIS 26621, at *13-14 (E.D. Pa. Feb. 27, 2013).[3]

According to the ADA, an employee is disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having an impairment. 42 U.S.C. § 12102(2). The ADA, however, explicitly excludes from the definition of disability "[t]ransvestism, transsexualism, pedophilia, exhibitionism, voyeurism, **gender identity disorders not resulting from physical**

[3] Because the termination of Plaintiff's employment occurred in March 2007, Plaintiff's claims under the ADA must be evaluated pursuant to the statutory language of the ADA (and relevant case law) prior to the ADA Amendments Act of 2008, which became effective on January 1, 2009 and is not retroactive. See Seibert, 2009 U.S. Dist. LEXIS 110823, at *20 n.4 ("Because the allegedly discriminatory acts in this case took place prior to January 1, 2009, this Court has accordingly applied the provisions of ADA as they existed prior to passage of the ADAAA.").

impairments, or other sexual behavior disorders." 42 U.S.C. § 12211(b) (emphasis added); see also 29 C.F.R. § 16030.3(d).

In the Amended Complaint, Plaintiff alleges that she was diagnosed with "Gender Dysphoria, also known as Gender Identity Disorder." Amended Complaint at ¶ 10. Based upon the plain language of the ADA and corresponding regulation, Plaintiff is not disabled within the meaning of the ADA. Because Plaintiff cannot establish that she is disabled within the meaning of the ADA, Plaintiff has failed to state a claim for disability discrimination under the ADA. See Johnson v. Fresh Mark, Inc., 337 F. Supp. 2d 996, 1001-02 (N.D. Oh. 2003) (granting motion to dismiss claim under the ADA for failure to state a claim upon which relief may be granted based upon the explicit exclusion of transsexualism from the ADA and the plaintiff's failure to identify a major life activity affected by her condition), aff'd, 98 Fed. Appx. 461, 462 (6th Cir. 2004); Michaels v. Akal Security, Inc., Civil Action No. 09-cv-01300-ZLW-CBS, 2010 U.S. Dist. LEXIS 62954, at *18-19 (D. Colo. June 24, 2010) (granting motion to dismiss claim for harassment based on perceived disability under the Rehabilitation Act because, applying the standards under the ADA, "[g]ender dysphoria, as a gender identity disorder, is specifically exempted as a disability by the Rehabilitation Act"); James v. Ranch Mart Hardware, Case No. 94-2235-KHV, 1994 U.S. Dist. LEXIS 19102, at *4-5 (D. Kan. Dec. 23, 1994) (sustaining motion to dismiss ADA claim for discrimination on the basis of transsexualism because "[t]he Americans with Disabilities Act does not recognize transsexualism as a covered disability. Rather, this is a condition which is specifically exempted from coverage.").

Plaintiff has also failed to allege any facts to support a claim that Cabela's regarded Plaintiff as having an impairment. To be "regarded as" having a disability under the ADA, Plaintiff must show that she "(1) has a physical or mental impairment that does not substantially

limit major life activities, but is treated by a covered entity as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or (3) has no such impairment, but is treated by the covered entity as having a substantially limiting impairment." Sutton v. United Air Lines, Inc., 527 U.S. 471, 489 (1999); Goodman v. L.A. Weight Loss Ctrs., Inc., Civil Action No. 04-CV-3471, 2005 U.S. Dist. LEXIS 1455, at *5 (E.D. Pa. Feb. 1, 2005). Importantly, to be "regarded as" having a disability under the ADA, the employer must "regard[] the employee to be suffering from an impairment within the meaning of the statutes, not just that the employer believed the employee to be somehow disabled." Rinehimer v. Cemcolift, Inc., 292 F.3d 375, 381 (3d Cir. 2002) (quotations omitted).

Plaintiff has failed to set forth any facts alleging that Cabela's perceived her as being disabled, impaired, substantially limited in any major life activity, or unable to perform a wide range of tasks or jobs. See Sutton, 527 U.S. at 491-94; Goodman, 2005 U.S. Dist. LEXIS 1455, at *5 (citing 29 C.F.R. § 1630.2(j)(3)(i)); Keyes v. Catholic Charities of the Archdiocese of Phila., 415 Fed. Appx. 405, 410 (3d Cir. 2011) (explaining that mere awareness of an alleged impairment is "insufficient to demonstrate either that the employer[s] regarded [plaintiff] as disabled or that that perception caused the adverse employment action"). Absent from Plaintiff's Amended Complaint is any identification of facts showing that Cabela's "misinterpreted information about [her] limitations to conclude that [Plaintiff] was unable to perform a 'wide range or class of jobs.'" Davis v. Davis Auto, Inc., Civil Action No. 10-CV-03105, 2011 U.S. Dist. LEXIS 135186, at *27-28 (E.D. Pa. Nov. 22, 2011). To the contrary, Plaintiff alleges that she "at all times maintained an excellent job performance rating." Amended Complaint at ¶ 13.

As a result, Plaintiff has failed to allege any facts to support a claim that she was regarded as having a disability under the ADA.

Likewise, Plaintiff has failed to state a claim for disability discrimination under the ADA based upon having a record of impairment. "[I]f the record at issue does not reference a disability or condition covered by the ADA, [the employer] is not liable even if it did rely on that record in making the adverse employment decision." Eshelman v. Agere Sys., 554 F.3d 426, 437 (3d Cir. 2009). Conversely, an employer must actually rely on a record of impairment in taking the adverse action. Id. In the Amended Complaint, Plaintiff has failed to set forth any allegations that a record of her impairment exists. In any event, because gender identity disorder is not a disability or condition covered by the ADA, there can be no claim for disability discrimination based upon having a record of impairment. See Davis, 2011 U.S. Dist. LEXIS 135186, at *25 ("Moreover, even if there were a record of Plaintiff's impairments, these impairments must constitute a disability within the meaning of the ADA."). Furthermore, Plaintiff has failed to set forth any allegations that Cabela's relied upon any record of impairment when making any decision related to her employment. Instead, Plaintiff's Amended Complaint merely contains the conclusory allegation that "[t]he actions of the Defendant, through its agents, servants and employees, in discriminating against Plaintiff Blatt on the basis of her actual and/or perceived disabilities and/or record of impairment," Amended Complaint at ¶ 53, constitute violations of the ADA. As a result, Plaintiff has failed to state a claim for disability discrimination based upon a record of impairment under the ADA and this claim must be dismissed. See Koller v. Riley Riper Hollin & Colagreco, 850 F. Supp. 2d 502, 514-15 (E.D. Pa. 2012) (dismissing claim for disability discrimination where the plaintiff failed to allege that his

termination was the result of any record of the alleged impairment and that the allegations "simply do not rise to the level necessary to infer any disability under the ADA").

Accordingly, Plaintiff's claim for disability discrimination under the ADA based upon having a record of impairment should be dismissed.

2. Plaintiff Fails to State a Claim for Failure to Accommodate.

Plaintiff has also failed to state a claim for failure to accommodate under the ADA (Count III). Employers are only required to accommodate the disabilities of employees who are actually impaired. 29 C.F.R. § 1630.9(e); Kaplan v. City of North Las Vegas, 323 F.3d 126, 1232 (9th Cir. 2003) (holding that there is no duty to accommodate an employee in an "as regarded" case); see also Weber v. Strippit, Inc., 186 F.3d 907, 916-17 (8th Cir. 1999) (holding that "regarded as" disabled plaintiffs are not entitled to reasonable accommodations); Rhoads v. FDIC, 257 F.3d 373, 386 (4th Cir. 2001) (explaining that plaintiff's claims under the ADA for failure to make a reasonable accommodation requires a showing that she was "disabled" within the meaning of the ADA); Kastl v. Maricopa County Comty. College Dist., No. CIV 02-1531-PHX-SRB, 2004 U.S. Dist. LEXIS 29825, at *14-15 (D. Ariz. June 3, 2004) (noting that employers are only required to accommodate the disabilities of employees who are impaired, as opposed to those whom the employer merely regards as impaired).

As explained above, Plaintiff is not disabled within the meaning of the ADA. As a result, Cabela's did not have any duty to accommodate Plaintiff. Accordingly, Plaintiff's claim for failure to accommodate under the ADA should be dismissed.

3. Plaintiff Fails to State a Claim for Retaliation.

Finally, Plaintiff has failed to state a claim for retaliation under the ADA (Count IV). The ADA prohibits retaliation against any individual "because such individual has opposed any

act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a). To establish a claim for retaliation, a plaintiff must show: (1) a protected employee activity; (2) adverse employment action by the employer after or contemporaneous with the employee's protected activity; and (3) a causal connection between the protected activity and the adverse action. Khalil v. Rohm & Haas Co., Civil Action No. 05-3396, 2008 U.S. Dist. LEXIS 10169, at *67-68 (E.D. Pa. Feb. 12, 2008).

Although a plaintiff need not be "disabled" within the meaning of the ADA to bring a claim for retaliation under the ADA, a plaintiff must still present facts demonstrating the existence of some protected activity under the ADA. Khalil, 2008 U.S. Dist. LEXIS 10169, at *68-69. "[G]eneral complaints of unfairness or civil rights violations do not constitute 'protected activity.'" Khalil, 2008 U.S. Dist. LEXIS 10169, at *68.

Plaintiff has failed to set forth any allegations that she engaged in employee activity that is protected under the ADA. The Amended Complaint contains no identification of facts showing that Plaintiff engaged in any act to oppose unlawful disability discrimination. Instead, the Amended Complaint contains allegations that Plaintiff reported conduct that she alleges was discriminatory based on her sex, not any disability. Amended Complaint at ¶¶ 21-22, 26, 40. Plaintiff makes the conclusory allegations that "[t]he actions of the Defendant, through its agents, servants and employees, in retaliating against Plaintiff Blatt for requesting a reasonable accommodation, and for opposing unlawful disability discrimination in the workplace" constituted a violation of the ADA. Amended Complaint at ¶ 57. Plaintiff fails, however, to identify any facts showing that she engaged in any act to oppose unlawful disability discrimination.

Likewise, absent from the Amended Complaint are any plausible allegations that Plaintiff engaged in protected activity by requesting an accommodation for a disability. Jackson v. J. Lewis Crozer Library, 445 Fed. Appx. 533, 536-37 (3d Cir. 2011) ("Requesting an accommodation on account of a disability amounts to a protected activity."). Although Plaintiff provides a "formulaic" recital that, "as a reasonable accommodation for her disability," she requested a female uniform and a name tag that displayed her name, Amended Complaint at ¶ 16, this allegation is no more than a "legal conclusion couched as a factual allegation." Baraka, 481 F.3d at 195; Twombly, 550 U.S. at 555; Ashcroft, 556 U.S. at 678. Indeed, in Plaintiff's Amended Complaint, she alleges that she "requested a female uniform as a reasonable accommodation for her disability, as other female employees wore female uniforms." Amended Complaint at ¶ 16 (emphasis added). Likewise, Plaintiff alleges that she requested the use of a female restroom as an accommodation for the legal change of her name and gender designation. See Amended Complaint at ¶ 28. Clearly, Plaintiff's requests for a female uniform, name tag, and to use the female restroom were based on gender, not any disability.

In addition to the above, Plaintiff fails to satisfy the second prong of a claim for retaliation under the ADA because she failed to identify any facts showing that Cabela's took an adverse employment action against her at or contemporaneous with her alleged request for an accommodation. An adverse employment action is one "serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment." Stranzl v. Del. County, Civil Action No. 13-1393, 2014 U.S. Dist. LEXIS 95475, at *25-26 (E.D. Pa. July 14, 2014). "Only 'materially' adverse employment actions support an ADA claim, as opposed to 'trivial harms.'" Id. at *24; see also Simmerman v. Hardee's Food Sys., Civil Action No. 94-6906, 1996 U.S. Dist. LEXIS 3437, *46((E.D. Pa. Mar. 25, 1996) (noting that examples of

adverse employment actions under the ADA include "demotion, additional responsibilities, termination, denial of a deserved promotion, pay decrease, or loss of benefits").

Absent from the Amended Complaint are any allegations that Cabela's took an adverse employment action against Plaintiff because of her alleged request for an accommodation. In fact, the Amended Complaint contain Plaintiff's allegations that she was permitted to wear a female uniform and that Cabela's issued Plaintiff a new name tag after she legally changed her name. Amended Complaint at ¶¶ 16, 32. Furthermore, as Plaintiff alleges in her Amended Complaint, Plaintiff was permitted to use the unisex family restroom in response to her request to use the female restroom. Amended Complaint at ¶ 31. Cabela's was not required to provide the very accommodation that Plaintiff requested. See Mastronicola v. Principi, No. 2:04-cv-1655, 2006 U.S. Dist. LEXIS 78879, at *15 (W.D. Pa. Oct. 30, 2006) (citing 29 C.F.R. pt. 1630, App. § 1630.9); Hankins v. Gap, Inc., 84 F.3d 797, 800-01 (6th Cir. 1996) (quoting the Appendix to the ADA regulations, "the employer providing the accommodation has the ultimate discretion to choose between effective accommodations" and, further noting that "an employee cannot make his employer provide a specific accommodation if another reasonable accommodation is instead provided"). Furthermore, although the Amended Complaint contains one generic allegation that, "[a]s a direct result of the aforesaid unlawful retaliatory employment practices engaged in by the Defendant in violation of the ADA, Plaintiff Blatt sustained permanent and irreparable harm resulting in the termination of her employment," Amended Complaint at ¶ 58, this "threadbare recital" is insufficient to state a plausible claim for retaliation. Ashcroft, 556 U.S. at 678, Twombly, 550 U.S. at 555. Plaintiff has failed to adequately identify any facts showing a causal connection between her alleged request for accommodation and the termination of her employment.

As a result of the foregoing, Plaintiff's claim for retaliation under the ADA should be dismissed.

III. CONCLUSION

Accordingly, for the foregoing reasons, Defendant Cabela's Retail, Inc. respectfully requests that Plaintiff's claims for disability discrimination, failure to accommodate, and retaliation arising under the ADA (Counts III and IV of the Amended Complaint) be dismissed, with prejudice, due to Plaintiff's failure to state a claim upon which relief can be granted.

Respectfully submitted,

FISHER & PHILLIPS LLP

Dated: November 18, 2014

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UNITED STATES DISTRICT COURT
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ORDER

AND NOW, this ____ day of _____, 20___, upon consideration of the Partial Motion of Defendant Cabela's Retail, Inc. to Dismiss Plaintiff's First Amended Complaint (the "Motion"), the Memorandum of Law in Support of the Partial Motion of Defendant Cabela's Retail, Inc. to Dismiss Plaintiff's First Amended Complaint, and any responses thereto,

IT IS HEREBY ORDERED and **DECREED** that the Motion is **GRANTED**, and

IT IS HEREBY ORDERED and **DECREED** that Counts III and IV of Plaintiff Kate Lynn Blatt's First Amended Complaint against Defendant Cabela's Retail, Inc. are **DISMISSED WITH PREJUDICE**.

BY THE COURT:

_____
JEFFREY L. SCHMEHL, U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KATE LYNN BLATT, Plaintiff, v. CABELA'S RETAIL, INC., Defendant.	: : : : : : : : :	CASE No.: 5:14-CV-04822-JLS

CERTIFICATE OF SERVICE

I, Christin Choi, Esquire, hereby certify that on this 18th day of November 2014, true and correct copies of the Partial Motion of Defendant Cabela's Retail, Inc. to Dismiss Plaintiff's First Amended Complaint, the Memorandum of Law in Support of the Partial Motion of Defendant Cabela's Retail, Inc. to Dismiss Plaintiff's First Amended Complaint, and proposed form of Order were filed electronically and are available for viewing and downloading from the Court's ECF system and were served upon the following attorneys via the Court's ECF system:

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