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U.S. DISTRICT COURT
TERRE HAUTE DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

COLLEEN E. FENSTERMAKER,)
individually and on behalf of)
others similarly situated,)

Plaintiff)

) COLLECTIVE ACTION PURSUANT TO
) 29 USC § 216(b)

vs.)

) CASE NO.

INDIANAPOLIS COLTS, INC.,)

) 1 : 11 -cv- 1346 SEB -MJD

Defendant)

COLLECTIVE ACTION COMPLAINT FOR DAMAGES

Comes now the Plaintiff, Colleen E. Fenstermaker (hereinafter "Fenstermaker"), individually and on behalf of others similarly situated, by her counsel, and for her claims against the Defendant, the Indianapolis Colts, Inc. (hereinafter "Colts"), alleges and says:

I. STATEMENT OF THE CASE

Fenstermaker brings this collective action against the Colts pursuant to Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 USC § 216(b), for minimum wage violations. Fenstermaker brings this action for herself and all current and/or former employees of the Colts who were subjected to illegal wage practices, including the failure to pay minimum wages and the failure to properly record and keep proper records concerning employees wages and hours worked (exacerbated as the Colts paid Fenstermaker and other similarly situated employees in cash).

II. FACTUAL ALLEGATIONS

1. Fenstermaker resides in Indianapolis, Marion County, Indiana.
2. The Colts are a professional football team in the National Football League. The Colts are a for-profit foreign corporation authorized and doing business in the State of Indiana.
3. Fenstermaker was employed by the Indianapolis Colts on a part time basis as a hostess on the Colts' statistics crew. Fenstermaker began this work in the 1998 NFL season and continued until she was wrongfully terminated on September 9, 2011.
4. Fenstermaker was one of many part time support employees who would perform work for the Colts on game days. These employees have and continue to be paid by the Colts in cash and in amounts that do not result in the employees being paid at the federal minimum wage (currently \$7.25 per hour).
5. In Fenstermaker's case, she was one of a dozen or more hostesses who worked on the Colts' statistics crew. Fenstermaker and the other hostesses would pass out written materials (printouts of statistics, etc...) to coaches, announcers and other employees and/or guests in the press box area of the Colts' stadium. Fenstermaker and other hostesses would get drinks and food for those in the press box and otherwise attend to their needs and help them before, during and after the Colts' football game.
6. Fenstermaker and her fellow hostesses would work at least ten Colts games per year (two preseason and eight home games), plus work any Colts playoff games.
7. On the day of a typical Colts game, Fenstermaker and her fellow

hostesses would work eight or more hours (arriving two or more hours prior to game time, working throughout the game, and working significant hours post-game). For this eight or more hours work per game, the Colts were paying Fenstermaker and each hostess Forty Dollars (\$40.00) in cash. When Fenstermaker began in 1998, the Colts were only paying Twenty-Five Dollars (\$25.00) per game.

8. Throughout her employment with the Colts, Fenstermaker's time worked was not recorded by the Colts, nor was she asked to keep track of her time worked. The same was true for similarly situated hostesses.

9. The Colts have failed and refused to pay Fenstermaker and other similarly situated hostesses at a rate of pay equal to the federal minimum wage.

10. The Colts do not qualify for any exemption under the FLSA that permits the team to pay employees at a rate of pay below the federal minimum wage. Specifically, the Colts do not qualify for the FLSA's "Seasonal Amusement and Recreation Exemption."¹

III. COLLECTIVE ACTION ALLEGATIONS

11. Fenstermaker incorporates herein by reference paragraphs 1 - 10 above.

12. Fenstermaker brings this action individually, as a collective action on behalf of other current and former employees of the Colts who were denied a minimum wage.

13. This action is filed as a collective action pursuant to Section 16(b) of the Fair Labor Standards Act, 29 USC § 216(b) on behalf of Fenstermaker and on behalf of

¹See *Bridewell v. Cincinnati Reds*, 155 F.3d 828 (6th Cir. 1998); *Liger v. New Orleans Hornets*, 565 F.Supp.2d 680 (E.D. La. 2008)

all current and former hostesses who were paid in cash and who were paid less than a minimum wage. All were denied a minimum wage under the Colts' common plan and scheme to pay in cash and pay less than a minimum wage. By virtue of the "collective action," Fenstermaker represents the identical and/or similar interests of former and current Colts hostesses denied minimum wages under the same circumstance.

Fenstermaker anticipates that other of the Colts' employees and former employees will opt in to the action upon notice.

14. Pursuant to the FLSA, Fenstermaker will pursue discovery to obtain the names of the other current and former hostesses, to provide notice of the collective action, and to offer the opt in opportunity.

15. Particularly with the types of wage claims and practices at issue in this case, there are questions of law and fact that are common to the entire collective group.

16. The claims of Fenstermaker, the representative party, are typical of the claims of the whole collective group of current and former employees harmed by the Colts' illegal wage practices.

17. Fenstermaker will act to fairly and adequately protect the interests of the entire collective group of employees.

18. A collective action is superior to other available means for the fair and efficient prosecution of these wage claims against the Colts. For example, to prove the Colts' illegal wage practices, Fenstermaker and other members of this collective group would seek in discovery records about all similarly situated current and former employees whose who were similarly denied minimum wages. Many, if not all, of the potential opt-in plaintiffs are likely to be called upon as witnesses in Fenstermaker's

minimum wage case, and each will likely serve as a witness in the other's minimum wage lawsuit. Individual lawsuits by the members of the collective group could lead to 1) inconsistent or varying outcomes in the cases, 2) duplicitous discovery, or 3) competition for limited funds. Further, as a practical matter, the first litigant to trial may achieve a result which would have bearing on all of the other individuals in the group.

19. A determination regarding the "similarity" of those able to participate in the collective action would also allow litigation of claims that may not otherwise be cost effective. Some, if not most, of the individual group members may not be aware of their rights to their wages under Federal or Indiana law, or may not, because of financial means or experience, be in a position to seek the assistance of counsel to commence individual litigation.

20. A collective action will result in an orderly and expeditious administration of the group members' claims, and economies of time, court resources, effort and expense, and uniformity of decisions will be assured.

IV. JURISDICTION AND VENUE

21. This Court has jurisdiction over Fenstermaker's claims under 28 USC § 1331 and 28 USC § 1343 as her claims under the Fair Labor Standards Act raise a question of federal law, 29 USC § 201 et seq.

22. This Court is the appropriate venue for this cause of action as all of the work which is the subject of this wage claim occurred in Indianapolis, Marion County, Indiana.

V. STATEMENT OF CLAIMS

A. Fair Labor Standards Act Claims

23. Fenstermaker incorporates herein by reference paragraphs 1 through 20 above.

24. The Colts are an "enterprise," as that term is defined by the FLSA, covered by the overtime and minimum wage provisions of the FLSA. The Colts are an "employer," as that term is defined by the FLSA. Finally, the Colts are a "person" as that term is defined by the FLSA.

25. The Colts have, for a long period of time, been paying Fenstermaker and the other hostesses significantly less than the minimum hourly wages due and owing to them for their work performed, as required by the FLSA.

26. The Colts failure to comply with the FLSA's provisions regarding minimum wages is willful and without justification, and subjects the Colts to a three year statute of limitations.

27. Fenstermaker seeks, for herself and all members of the collective group, all available damages, including unpaid wages, unpaid minimum wages, liquidated damages, payment of reasonable attorney's fees, costs and expenses, and any and all other damages to which they may be entitled for the Colts' violations of the Fair Labor Standards Act.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Colleen E. Fenstermaker, individually and on behalf of members of the collective group, respectfully requests that the Court enter judgment against the Colts, and issue all available relief to her and to the entire collective group, including, but not limited to, the following:

1. All damages available under the FLSA, including all unpaid minimum

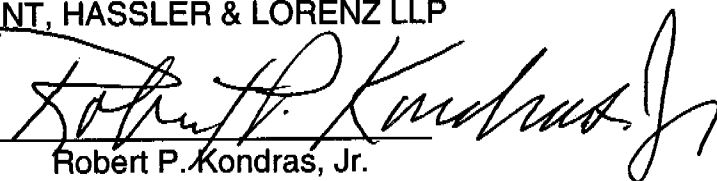
wages, all liquidated damages, and payment of all reasonable attorney's fees, costs and expenses;

2. All unpaid wages;
3. All reasonable attorney's fees and expenses;
4. Costs;
5. Pre-judgment interest, if available; and
6. Any and all other relief just and proper in the premises.

Respectfully submitted,

HUNT, HASSLER & LORENZ LLP

By



Robert P. Kondras, Jr.
Attorney No. 18038-84
100 Cherry Street
Terre Haute, IN 47807
(812) 232-9691
Facsimile: (812) 234-2881
kondras@huntlawfirm.net