

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

YVETTE JOY LIEBESMAN, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	Case No.:
)	
COMPETITOR GROUP, INC.,)	
)	
Defendant.)	

COLLECTIVE AND CLASS ACTION COMPLAINT

Plaintiff Yvette Joy Liebesman, individually and on behalf of those similarly situated (“Plaintiff”), for her Collective and Class Action Petition against Defendant Competitor Group, Inc. (“Defendant”) states as follows:

Introduction

1. Defendant Competitor Group, Inc. is a for-profit corporation that runs the Rock ‘n’ Roll series of marathons and half-marathons. This series has included forty-one separate events in the past two years, and more events are scheduled into 2015. Each of the forty-one events has relied on a legion of over one thousand laborers, called “volunteers,” who performed various tasks required by Defendant in order to operate the events, including, among other things, manning water stations, giving directions, and riding escort for the participants in the race. These “volunteers” were recruited under the auspices that they were providing a community service for various charity groups, all of which pay Defendant, in one form or another, for the privilege of being an “Official Charity.” While these charity groups provide Defendant with the veneer of community service, in fact Defendant is exploiting a volunteer labor force to avoid paying for necessary labor, a privilege not afforded for-profit companies

under the Fair Labor Standards Act (“FLSA”). As such, Defendant must pay minimum wage to those who work to make Defendant’s events possible. Alternatively or in addition, Plaintiff has conferred a benefit that Defendant is retaining unjustly.

The Parties and Venue

2. Plaintiff Yvette Joy Liebesman, at all times relevant hereto, was a resident of the state of Missouri, residing at 7570 Cornell Avenue, University City, MO 63130. On October 21, 2012, Liebesman offered her time and efforts, purportedly as a volunteer, in the St. Louis Rock ‘n’ Roll Half-marathon, riding as a bicycle escort for the lead runners in that race.

3. Defendant Competitor Group, Inc. is a for-profit Delaware Corporation, with its principal place of business in the State of California. Defendant Competitor Group, Inc. conducts business in the State of Missouri.

4. Defendant owns and operates the Rock ‘n’ Roll Marathon/Half-Marathon races, which have been staged in approximately twenty-four locations annually for the past two years. Specifically, Defendant owns and operated the St. Louis Rock ‘n’ Roll Marathon/Half-Marathon, which took place on October 21, 2012, in St. Louis, Missouri, and for which Plaintiff provided her labor.

5. The Court has subject matter jurisdiction over Plaintiff’s federal law claims pursuant to 28 U.S.C. §§1331 and 1332, as well as Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. §216(b), because these claims seek redress for violations of Plaintiff’s federal statutory rights.

6. This Court has supplemental jurisdiction over Plaintiff’s claims under state law pursuant to 28 U.S.C. §1367, because these claims are so closely related to Plaintiff’s federal law wage and hour claims that they form parts of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper in the Eastern District of Missouri pursuant to 28 U.S.C. §1391(b) and (c) as a substantial part of the events or omissions giving rise to the claims occurred in this judicial District.

Facts Relevant to All Counts

8. On or about October 21, 2012, and again on or about October 27, 2013, Defendant operated and put on the St. Louis Rock ‘n’ Roll Marathon and Half-Marathon, in St. Louis, Missouri.

9. On or about April 27, 2013, and again on or about April 26, 2013, Defendant operated and put on the Country Music Rock ‘n’ Roll Marathon and Half-Marathon in Nashville, Tennessee.

10. On or about January 20, 2013, and again on or about January 19, 2014, Defendant operated and put on the Arizona Rock ‘n’ Roll Marathon and Half-Marathon in Phoenix, Arizona.

11. On or about July 21, 2013, and again on or about July 20, 2014, Defendant operated and put on the Chicago Rock ‘n’ Roll Marathon and Half-Marathon in Chicago, Illinois.

12. On or about March 24, 2013, and again on or about March 23, 2014, Defendant operated and put on the Dallas Rock ‘n’ Roll Marathon and Half-Marathon in Dallas, Texas.

13. On or about December 2, 2012, and again on or about November 17, 2013, Defendant operated and put on the Las Vegas Rock ‘n’ Roll Marathon and Half-Marathon in Las Vegas, NV.

14. On or about October 28, 2012, and again on or about October 27, 2013, Defendant operated and put on the Los Angeles Rock ‘n’ Roll Marathon and Half-Marathon in Los Angeles, California.

15. On or about November 18, 2012, Defendant operated and put on the Miami Beach Half-Marathon in Miami, Florida.

16. On or about February 24, 2013, and again on or about February 2, 2014, Defendant operated and put on the New Orleans Rock 'n' Roll Marathon and Half-Marathon in New Orleans, Louisiana.

17. On or about February 17, 2013, Defendant operated and put on the Pasadena Rock 'n' Roll Marathon and Half-Marathon in Pasadena, California.

18. On or about September 15, 2013 and again on or about September 21, 2014, Defendant operated and put on the Philadelphia Rock 'n' Roll Marathon and Half-Marathon in Philadelphia, Pennsylvania.

19. On or about May 19, 2013, and again on or about May 18, 2014, Defendant operated and put on the Portland Rock 'n' Roll Marathon and Half-Marathon in Portland, Oregon.

20. On or about September 29, 2013, Defendant operated and put on the Providence Rock 'n' Roll Marathon and Half-Marathon in Providence, Rhode Island.

21. On or about April 15, 2014, Defendant operated and put on the Raleigh Rock 'n' Roll Marathon and Half-Marathon in Raleigh, North Carolina.

22. On or about November 11, 2012, and again on or about November 17, 2013, Defendant operated and put on the San Antonio Rock 'n' Roll Marathon and Half-Marathon in San Antonio, Texas.

23. On or about June 2, 2013, and again on or about June 1, 2014, Defendant operated and put on the San Diego Rock 'n' Roll Marathon and Half-Marathon in San Diego, California.

24. On or about April 7, 2013, and again on or about April 6, 2015, Defendant operated and put on the San Francisco Rock 'n' Roll Marathon and Half-Marathon in San Francisco, California.

25. On or about October 7, 2012, and again on or about October 6, 2013, (and again on or about October 5, 2014) Defendant operated and put on the San Jose Rock 'n' Roll Marathon and Half-Marathon in San Jose, California.

26. On or about November 3, 2012, and again on or about November 9, 2013, Defendant operated and put on the Savannah Rock 'n' Roll Marathon and Half-Marathon in Savannah, Georgia.

27. On or about June 22, 2013, and again on or about June 21, 2014, Defendant operated and put on the Seattle Rock 'n' Roll Marathon and Half-Marathon in Seattle, Washington.

28. On or about February 10, 2013, Defendant operated and put on the St. Pete Rock 'n' Roll Marathon and Half-Marathon in St. Petersburg, Florida.

29. On or about March 16, 2013, and again on or about March 15, 2014, Defendant operated and put on the USA Rock 'n' Roll Marathon and Half-Marathon in Washington, D.C.

30. On or about September 1, 2013, and again on or about August 30, 2014, Defendant operated and put on the Virginia Beach Rock 'n' Roll Marathon and Half-Marathon in Virginia Beach, Virginia.

32. The Rock 'n' Roll Series of races is scheduled for seventeen additional races in the 2014-2015 season, including the St. Louis Rock 'n' Roll Marathon scheduled for October 18-19, 2014.

33. In advance of the October 21, 2012 St. Louis Rock 'n' Roll Marathon and Half-Marathon, Plaintiff signed up to serve as a bicycle escort for the lead group of female half-marathoners.

34. Plaintiff, along with all other individuals serving as bicycle escorts, was required to provide a bicycle, cell phone, and hands free device for that cell phone.

35. The cell phone, in particular, was necessary because Defendant required the bicycle escorts to report any problems and the progress of the faster runners. Defendant did not provide the bicycle escorts with cell phones or other communication devices for these purposes.

36. In advance of the event, Plaintiff was provided a lead cyclist vest and credential that was to be worn during the event.

37. After assembling the necessary equipment, Plaintiff arrived at approximately 6:00 a.m. on October 21, 2012, at the staging area for the St. Louis Rock 'n' Roll Half-Marathon. The race began at 7:00 a.m.

38. During the October 21, 2012 event, the bicycle escorts began the race in front of the runners but behind the lead vehicles. As the faster runners began to break away from the pack, each bicycle escort chose a runner and remained with that runner through the remainder of the race. Once the escorts chose their runner, they were to stay in front or to the side for the majority of the race, and for the last 500 yards stay behind the runner to allow for photographs of the runner as she approached the finish line.

39. The bicycle escorts provided a degree of visibility for each faster runner, who can be hard to spot from a distance. The escorts also provided a layer of safety to prevent pedestrians from crossing directly in front of runners.

40. Plaintiff was instructed to stay close to her chosen runner so that she could warn off pedestrian traffic and keep the runner and the spectators safe.

41. Plaintiff's duties also included phoning and/or texting the announcer at the finish line to report times for the lead runners, and moving barriers.

42. Other individuals were required to sit along the marathon and half-marathon route to preserve barriers, keep cars and pedestrians off of the running route, and give water and other refreshments to the participants.

43. The duties that Plaintiff and other individuals had were necessary and integral to the operation of the St. Louis Rock 'n' Roll Half-Marathon and all other of Defendant's events.

44. Plaintiff and other individuals signed up for these duties under the title of volunteers.

45. Defendant requires Plaintiff and other individuals to designate the charity for which they are "volunteering." But Plaintiff and other individuals may have no connection to those charities. In this way, Defendant's requirement that Plaintiff and other individuals designate a charity for which they are "volunteering" is merely pretext for obtaining free labor.

46. These charities also had to pay Defendant an amount of money, or provide Defendant with sufficient paying participants in a given race, to be a recognized charity. *See* Exhibit 1.

47. Per Exhibit 1, there are four tiers of charity participation, with "Official Charity" being the base level. For recognition as an "Official Charity," the 501(c)(3) must provide at least 10 race participants paying \$165.00 each. This means that to be an "Official Charity," the group must guarantee Defendant \$1650.00 in revenue.

48. Upon information and belief, for a charity to participate at the other tiers requires the charity to generate even more guaranteed revenue for Defendant.

49. In exchange for guaranteeing a certain amount of revenue for Defendant, the charity was allowed to call itself “**an** (“not the”) Official Charity of the Rock ‘n’ Roll [city name] Marathon” in its recruiting, fundraising, and marketing campaigns, may use the event logo in the same manner, and receives a training guide and “Recruitment Package,” which includes various material from the prior year’s event. *See* Ex. 1 (emphasis in original). In addition, the Rock ‘n’ Roll Marathon website for the specific event will have a reciprocating link to the charity. *Id.*

50. For the event itself, Official Charity Participants received a participant medal, a “Goodie Bag Insert,” which is inserted into all race participant bags (at Defendant’s cost if priced at \$.0175/insert), a discount for an expo booth, and a media credential.

51. Finally, the Official Charity may bring its own branded tent, or rent one from Defendant, to be placed in the Charity Village in the finish area of the race. The size of the finish tent is dictated by the number of registered charity participants are in the event. If a charity has 500 registered charity participants, meaning \$82,500 in guaranteed revenue for Defendant, the charity may bring, or rent from Defendant, a 20’ X 40’ tent.

52. The Official Charities are also afforded the opportunity to provide 75 volunteers for aid stations on the course during race day. The Official Charity “may theme or brand their aid station according to the guidelines governing water stations.”

53. Official Charities are required to provide Defendant with the amount of net fundraising raised through the event one month prior to the event, and then again one week prior.

54. Defendant employs the Official Charities to create an impression in individuals who might provide it labor and the public that its events are not-for-profit and that it is a not-for-profit organization.

55. Instead, the Official Charities are both a revenue stream and a veneer for recruiting free labor for Defendant.

56. Plaintiff and other individuals who provided their labor to Defendant are absolutely necessary to the operation of Defendant's events.

57. Defendant relies so much on those providing their labor without compensation that, upon information and belief, Defendant has a position titled "Coordinator, Volunteer Services."

58. Upon information and belief, the job description for "Coordinator, Volunteer Services" is replete with references to subordinate Volunteer Coordinators and volunteers. In fact, one such job duty is to work with Event Management to create a Volunteer Plan for each event, listing volunteer functions, times and **headcount needed for minimum and optimum volunteer recruitment**.

59. The Coordinator position also was to be in charge of developing volunteer training materials, training and support for online volunteer registration, developing print volunteer recruitment collateral, recruitment mailing, and volunteer appreciation at events.

60. Through the use of charity groups and its own volunteer recruitment efforts, Defendant, a for-profit corporation, has been able market its events, increase participation rates, and staff its events with necessary labor without paying the individuals providing that labor the federal or state minimum wages.

Class Allegations

61. Plaintiff brings this action for her individually and as representative of a class of all other similarly situated plaintiffs. Plaintiff intends to seek certification of a nationwide class of individuals who worked in various capacities, purportedly as volunteers, for Defendant's races.

62. Plaintiffs initially describe the Purported Volunteer Class as:

All persons who expended their time, labor, and efforts, purportedly in a volunteer capacity, on behalf of Defendant Competitor Group, Inc., in operating its events from October 21, 2012 until present.

Plaintiffs expect to further define the Purported Volunteer Class prior to seeking class and/or conditional class certification.

63. Excluded from the classes above are Defendants and any of their officers or directors and immediate families, the Court and its immediate family, and any other individuals who have brought individual lawsuits arising from the same allegations against the Defendants.

64. Plaintiffs reserve the right to amend or modify the class definitions and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

65. The Class is sufficiently numerous that joinder of all members of the class is impracticable. The exact number and identity of all class members may be ascertained by appropriate discovery, but it is Plaintiffs' belief that the proposed classes comprise approximately 1000 individuals per race, for each and every race. Class members may be notified of the pending action by email, mail, and by publication as necessary.

66. There are questions of fact and law common to the class(es), which common questions predominate over questions affecting only individual members. The common questions include, but are not limited to, the following:

- a. whether Defendant, a for-profit corporation, can rely on unpaid labor to perform services necessary for the operation of its events;
- b. whether Defendant, a for-profit corporation, can use not-for-profit organizations as a way to provide unpaid labor to perform necessary services for the operation of its events;
- c. whether Defendant, a for-profit corporation, can have a civic, charitable or humanitarian purpose when the revenue it generates, even from affiliated not-for-profits, results in additional profits for the Defendant;
- c. whether Plaintiff, and other similarly situated individuals, provided Defendant with their labor without expectation of compensation from a for-profit corporation;
- d. whether the labor Plaintiff and those similarly situated provided Defendant was to the primary benefit of Defendant;
- e. whether the labor Plaintiff and those similarly situated provided Defendant was integral to the operation of the event and Defendant's business; and
- f. whether the use of Plaintiff's (and others') labor without compensation was the result of Defendant using coercion, pressure, or deception.

67. The claims of the representative Plaintiff are typical of the claims of the members of the classes. Plaintiff, like all other members of the Class, has sustained legal injuries arising from Defendants' conduct, as alleged herein. The representative Plaintiff and the members of

the class have suffered and continue to suffer similar or identical injuries-in-fact caused by the same unlawful conduct engaged in by Defendants.

68. Plaintiff can and will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class. Plaintiffs have retained attorneys who are highly skilled, competent, and experienced in complex and class action litigation, and who will vigorously assert the claims on behalf of the class members. No conflict exists between Plaintiff and the classes. Plaintiff is willing and able to vigorously prosecute this action on behalf of the classes.

69. The collective and class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. all putative class members are “similarly situated;”
- b. common questions of fact and law predominate over any individual questions that may arise, such that the class action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- c. there will be enormous economies to the Court and the parties in litigating the common issues in a class action instead of in multiple individual claims;
- d. class treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class members;
- e. if the size of individual class members’ claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims

on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and

- f. the trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff Class(es) predominate over any individual issues that may arise.

Claims

Count I – Failure to Pay Minimum Wages Under the Fair Labor Standards Act

70. Plaintiff incorporates by reference the allegations in paragraphs 1 through 69 as if set forth fully herein.

71. Section 6 of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §206, establishes the right to be paid minimum wages. Section 16(b) of the FLSA, 29 U.S.C. §216(b) entitles an employee to recover all unpaid wages, an equivalent amount as liquidated damages, and reasonable attorneys’ fees and costs.

72. Defendants knowingly, willfully, and intentionally failed to compensate Plaintiff and others similarly situated the applicable minimum hourly wage in violation of 29 U.S.C. §206(a).

73. Defendants also willfully required Plaintiff and others similarly situated to pay for equipment required to for equipment that was necessary to carry out duties assigned by Defendant. The cost of this equipment further reduced wages below the minimum hourly wage in violation of 29 U.S.C. §206(a) and applicable regulations, specifically 29 C.F.R. §531.35.

74. Because of Defendant’s willful violation of the FLSA, Plaintiff is entitled to recover from Defendant their unpaid minimum wages, an equivalent amount in the form of

liquidated damages, as well as reasonable attorneys' fees and costs of the action, including pre-judgment interest, pursuant to FLSA, all in an amount to be determined at trial. 29 U.S.C. 216(b).

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Volunteer Class described herein, both as an FLSA collective action and a Fed. R. Civ. P. 23 class action, and enter judgment in favor of the Class and against Defendant, award unpaid minimum wages, an equivalent amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

Count II – State Minimum Wages Violations

75. Plaintiff incorporates by reference the allegations in paragraphs 1 through 74 as if set forth fully herein.

76. For ten states and the District of Columbia, in which Defendant holds or has held Rock 'n' Roll Marathons/Half-Marathons, the state minimum wage law dictates a higher minimum wage than does the federal minimum wage law. Those states are Arizona (\$7.90), California (\$9.00), Colorado (\$8.00), Florida (\$7.93), Illinois (\$8.25), Missouri (\$7.50), Nevada (\$8.25), Oregon (\$9.10), Rhode Island (\$8.00), and Washington (\$9.32). The District of Columbia's minimum wage is \$9.50 per hour.

77. For those states, Defendant knowingly, willfully, and intentionally failed to compensate Plaintiff and similarly situated class members the applicable minimum hourly wage in violation of those states' minimum wage laws.

78. In addition, Defendant willfully required Plaintiff and similarly situated class members to pay for equipment that was necessary to carry out duties assigned by Defendant, in

violation of certain states' laws and regulations. Payments for the equipment further reduced the hourly wages that were paid.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Volunteer Class described herein, both as an FLSA collective action and a Fed. R. Civ. P. 23 class action, and enter judgment in favor of the Class and against Defendant, award unpaid minimum wages, an equivalent amount in the form of liquidated damages, such other damages as are warranted under state laws and regulations, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

Count III – Unjust Enrichment

79. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78 as if set forth fully herein.

80. Plaintiff, by virtue of providing free labor, has conferred a benefit on Defendant.

81. Defendant has appreciated the benefit conferred, by being able to operate and put on the St. Louis Rock 'n' Roll Marathon and Half-Marathon without having to pay certain portions of its labor force.

82. Defendant has retained this benefit by failing to compensate Plaintiff for her labor and for continuing to operate its races without compensating persons similarly situated to Plaintiff.

83. Defendant has been able to retain this benefit by maintaining a veneer of charitable or not-for-profit purpose, while increasing its profits.

84. Defendant, a for-profit corporation, cannot legally rely on volunteers to provide it labor. Under the circumstances, retaining this benefit is unjust and inequitable.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Volunteer Class described herein, as a Fed. R. Civ. P. 23 class action, and enter judgment in favor of the Class and against Defendant, restore the unjustly retained benefit by awarding unpaid wages, such other damages as are warranted, as well as reasonable attorneys' fees and costs of the action, and for such other and further relief as this Court deems just and proper.

Count IV – Fraud

85. Plaintiff incorporates by reference the allegations in paragraphs 1 through 84 as if set forth fully herein.

86. Defendant represented to Plaintiff that its Rock 'n' Roll series of races had a charitable purpose. Defendant did so by enlisting legitimate charities in a scheme to recruit a volunteer labor force, for which it was not entitled as a for-profit corporation, and increase participation in its races and revenue for the same. Defendant's ultimate purpose was to increase its profit margins.

87. This representation by Defendant was false. To wit, Defendant used the veneer of legitimate charities to hide the fact that the profits from its races inured to Defendant, as a for-profit corporation.

88. The representation by Defendant that its races had a charitable purpose was material to Plaintiff and other similarly situated volunteering to provide Defendant with free labor.

89. Defendant knew that it was a for-profit corporation and that by enlisting legitimate charities it could obtain free labor for its events. Alternatively, Defendant was ignorant as to the truth that by enlisting such charities, it could employ a free labor force for its events. In either event, Defendant knew or was ignorant of the truth that a for-profit corporation cannot utilize free labor.

90. Defendant intended that the legitimate charities and potential volunteers would act upon the misrepresentation and provide Defendant with free labor, increased participation, and increased revenue for its races.

91. Plaintiff, and all those similarly situated, were ignorant of the fact that Defendant's races had no charitable purpose and that instead, all volunteers and charitable organizations were providing Defendant with free labor for which it should have to pay, increased participation, and hence increased revenue. More simply, Plaintiff and those similarly situated did not, and had no way of knowing, that their role was to increase Defendant's profit margins in a way not allowed under federal and state law.

92. Plaintiff and all those similarly situated relied on, and had a right to rely on, Defendant's misrepresentations as to the charitable purpose of Defendant's races.

93. Plaintiff and all those similarly situated consequently provided labor for which they were entitled to compensation, and were not provided compensation for that labor.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Volunteer Class described herein, as a Fed. R. Civ. P. 23 class action, and enter judgment in favor of the Class and against Defendant, restore the unjustly retained benefit by awarding unpaid wages, such other damages as are warranted, as well as reasonable attorneys' fees and costs of the action, and for such other and further relief as this Court deems just and proper..

DATED: September 23, 2014

SIMMONS HANLY CONROY

/s/ John R. Phillips
Derek Brandt, *pro hac vice* pending
John R. Phillips, #55159
Kyle Bass, #65768
One Court Street
Alton, Illinois 62002
(618) 259-2222 Tel.
(618) 259-2251 Fax
dbrandt@simmonsfirm.com
jphillips@simmonsfirm.com
kbass@simmonsfirm.com

Attorneys for Plaintiff