

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEXA BRENNEMAN	:	CASE NO: 1:14-cv-136
c/o Goldenberg Schneider, LPA	:	
One West Fourth Street, 18 th Floor	:	JUDGE
Cincinnati, OH 45202	:	
	:	
individually, and on behalf of all those	:	
similarly situated,	:	
	:	CLASS ACTION COMPLAINT
Plaintiffs,	:	
	:	
vs.	:	(WITH JURY DEMAND)
	:	
CINCINNATI BENGALS, INC.	:	
c/o Michael Brown	:	
One Paul Brown Stadium	:	
Cincinnati, OH 45202	:	
	:	
Defendant.	:	

All allegations made in this Class Action Complaint are based upon information and belief except those allegations that pertain to Plaintiff, which are based on personal knowledge. Each allegation in this Class Action Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the *Federal Rules of Civil Procedure*, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I. PRELIMINARY STATEMENT

1. The Cincinnati Bengals current website, www.bengals.com, states that “[t]he Cincinnati Ben-Gals have played a major role in the Bengals organization year after year since 1968. On the field, these ladies perform in front of more than 64,000 fans at Paul Brown Stadium. When they are not cheering on the team, they are spending countless hours practicing, exercising and volunteering for community and charity events throughout the tri-state. The Ben-Gals have appeared at charity functions, conventions, grand openings, trade shows, and other

charitable and civic causes each year. These ladies are young professionals who are not only involved in their own careers, but they are involved in many hours per week working for the Bengals organization within the community.”¹

2. These statements are largely accurate – the Ben-Gals are required to attend at least 6-8 hours of mandatory practices every week from late May through December, are required to appear at no fewer than 10 “charity”² functions a season, and must pose for and promote a Ben-Gals calendar. In fact, according to the official Cincinnati Ben-Gal Rules, “[t]he Cincinnati Ben-Gals do more outside appearances than on the field appearances.”³

3. When all of the mandatory practice time, public appearance time, time spent at Paul Brown stadium on game days, and time posing for and promoting the Ben-Gals calendar are added together, the Ben-Gals spend well over 300 hours a year “working for the Bengals organization.”

4. Yet despite the fact that Defendant admits the Ben-Gals spend these “many hours per week working for the Bengals organization,” Defendant only compensates them, at most, \$90 for each home football game at which they cheer.

5. Plaintiff was a Ben-Gal cheerleader during the 2013 season, and as such was an employee of Defendant. Plaintiff worked well in excess of 300 hours for Defendant, and appeared at 10 home games during the 2013 season, but Defendant only paid her a total of \$855, a pay rate of less than \$2.85 per hour.

6. In 2013, the Ohio minimum wage was \$7.85 an hour.

1 See www.bengals.com/cheerleaders/auditions.html, last accessed February 10, 2014.

2 As discussed in more detail below, “charity” is loosely defined to include not only traditional charities, but also promotional appearances serving no charitable purpose whatsoever.

3 See Cincinnati Ben-Gals Rules, attached as Exhibit B.

7. Unlike the Defendant, the 2013-14 Super Bowl Champion Seattle Seahawks organization compensates their team cheerleaders, the Sea Gals, at “an hourly wage and any applicable overtime required by law, for all hours worked.”⁴

8. Furthermore, the only other professional sports franchise in Ohio that employs cheerleaders, the Cleveland Cavaliers of the National Basketball Association, pays its cheerleaders for “rehearsals, games, appearances/promotions and dance clinics.”⁵

9. Plaintiff, a former non-exempt employee of Defendant, brings this action against Defendant because she and all other current and former Ben-Gal cheerleaders were unlawfully denied minimum wages in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, Article II, Section 34a of the Ohio Constitution, and the Ohio Minimum Fair Wage Standards Act, O.R.C. § 4111.01 *et seq.*

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216. In addition to the named Plaintiff’s individual claims, this action is filed as and intended to be a “collective action” as authorized by the Fair Labor Standards Act. Federal jurisdiction is invoked in this instance to secure protection and to redress deprivations of rights under the statutes of the United States, specifically including the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

11. Plaintiff also seeks an exercise of this Court’s Supplemental Jurisdiction as to the Ohio State law claims under 28 U.S.C § 1367.

⁴ See <http://prod.static.seahawks.clubs.nfl.com/assets/2013/sea-gals/html/auditions/rules.html>, last accessed February 10, 2014.

⁵ See http://www.nba.com/cavaliers/dance/cavalier_girls_auditions.html, last accessed February 10, 2014.

12. The actions complained of by Plaintiff occurred within the Western Division of the Southern District of Ohio. Accordingly, venue with this Court is appropriate.

III. PARTIES

13. Plaintiff Alexa Brenneman is a citizen of the United States who resides in Hamilton County, Ohio. Ms. Brenneman is a citizen of the State of Ohio.

14. Plaintiff was employed by Defendant as a Ben-Gal cheerleader from approximately May 2013 through January 2014. Ms. Brenneman has signed a consent to participate in this action in accordance with 29 U.S.C. § 216(b), which is attached as Exhibit A.

15. Defendant Cincinnati Bengals, Inc. is a for-profit Ohio Corporation first registered with the Ohio Secretary of State in 1980. The Cincinnati Bengals organization was the employer of Plaintiff and members of the proposed Class within the meaning of 29 U.S.C. § 203(d).

IV. STATEMENT OF FACTS

16. Defendant is a professional football franchise that employs approximately 30 cheerleaders each football season to “[r]epresent the Cincinnati Bengals organization by actively supporting the team, values, and goals of the Club.”⁶

17. Defendant is a member of the National Football League, an organization that includes a revenue-sharing program that spreads television royalties across the league.

18. However, the money that Defendant earns from Ben-Gal cheerleader calendar sales⁷ and Ben-Gal cheerleader promotional appearances⁸ remains with Defendant and is not

⁶ See www.bengals.com/cheerleaders/auditions.html, last accessed February 10, 2014.

⁷ The Ben-Gals Cheerleader Calendar is sold at Paul Brown Stadium and is available at <http://proshop.bengals.com/Cheerleader-Calendar-%2713-%2714-CHEERCAL13/>, last accessed February 10, 2014.

⁸ See www.bengals.com/cheerleaders/appearance-requests.html, last accessed February 10, 2014.

shared with the rest of the league. A 2003 Forbes Magazine article estimated that the extra revenue generated by a cheerleader squad such as the Ben-Gals amounts to “just over \$1 million a season.”⁹

19. Upon information and belief, Defendant has employed approximately 50 different Ben-Gal cheerleaders during the 3 years preceding the filing of this lawsuit.

20. Plaintiff is one of those approximately 50 Ben-Gal cheerleaders.

21. In early 2013, Plaintiff decided to try out for the Ben-Gals cheerleading squad.

22. To improve her chances of making the squad, Plaintiff initially attended dance classes at Paul Brown Stadium in February, March, and April of 2013.

23. Plaintiff then attended tryouts in May, 2013 and was informed that she made the squad on or around May 25, 2013.

24. After making the squad, Defendant provided Plaintiff with a W-4 and an “Authorization Agreement for Payroll Direct Deposit” by the Cincinnati Bengals, Inc. She was instructed to return the direct deposit authorization form to Johanna Kappner, Controller of the Cincinnati Bengals, Inc.

25. After completing these and other papers, Plaintiff was hired by Defendant to work as a Ben-Gal cheerleader during the 2013 football season.

26. Plaintiff was then provided with a copy of the Cincinnati Ben-Gal Rules.

27. As a condition of her employment with the Defendant, and as set forth in the Cincinnati Ben-Gals Rules, Plaintiff agreed to restrictions on her ability to take other jobs,

⁹ See *Pom-Pom and Profits*, available at <http://forbes.com/forbes/2003/0915/084.html>, last accessed February 10, 2014.

including “[t]eaching outside Bengals affiliation,” and “dancing or performing with any other group”¹⁰

28. The Cincinnati Ben-Gal Rules emphasize that practices are mandatory and failure to attend and participate will result in being forced to “sit out” games. This threat of punishment is particularly severe because the only time a Ben-Gal gets paid is for appearing at games.

29. For example, Plaintiff missed one game during the 2013-14 season to attend a funeral and was not paid anything for that week.

30. According to the Rules, “You may miss only 4 practices the entire season. Two tardy practices equal an absence. 16 minutes (or more) late equals an absence. Technically, 4 absences and 1 tardy can be missed. A total of 5 absences results in termination. Exemption: Your wedding.”¹¹

31. The Ben-Gals are required to practice at Paul Brown Stadium from 7-10 p.m. Tuesdays and Thursdays during the season, with additional practices required during the pre-season, and additional practices required for rookies (such as Plaintiff). However, because the Ben-Gals are required to “weigh-in”¹² prior to practices, and practice in full hair and makeup, they must arrive well before 7:00. Plaintiff was never paid for any of the practices Defendant required her to attend.

32. The time that Plaintiff and the other Ben-Gal cheerleaders spent at practices was and is “working time” within the meaning of 29 C.F.R. § 785.27 because, *inter alia*, attendance was not voluntary pursuant to 29 C.F.R. § 785.28.

¹⁰ See Cincinnati Ben-Gals Rules, attached as Exhibit B.

¹¹ See Exhibit B.

¹² Ben-Gals are weighed twice a week and must stay within 3 pounds of their “goal weight” or face discipline, including mandatory “extra conditioning” after practices, being “benched for weight violations,” probation, and ultimately dismissal from the team. See Exhibit B.

33. In addition to mandatory practices, Ben-Gals are required to attend mandatory “charity events.” Plaintiff attended, and was not paid for, ten such events. While some of these events were in fact legitimate “charity events,” others were purely designed to promote the Cincinnati Bengals organization. For example, during one such “charity event,” Plaintiff travelled to Lexington, KY to make a promotional appearance at a Lexington television station.¹³ The length of the mandatory charity events varied, but averaged approximately four hours.

34. The time Plaintiff and the other Ben-Gal cheerleaders travelling to and attending “charity events” was and is “work time” within the meaning of 29 C.F.R. § 785.44 because it was performed at Defendant’s request and/ or under Defendant’s direction and control.

35. While Ben-Gals are led to believe that they will supplement their meager compensation through paid appearances, Plaintiff made only one paid appearance, lasting several hours, for which she was compensated at the “charity rate” of \$75. Yet upon information and belief, the Cincinnati Bengals charge approximately the same rate for their cheerleaders to appear at events as other NFL organizations, or around \$300 an hour.¹⁴

36. Plaintiff was also required to pose for and promote the 2013-4 Cincinnati Ben-Gals calendar. Plaintiff was not paid for the time she spent modeling for the photographs, or the time she was required to promote the Calendar at events such as the Calendar Release Party.

¹³ A television commercial created during that promotional visit is available at <http://vimeo.com/73250126>, last accessed February 10, 2014.

¹⁴ See, e.g., <http://www.baltimoreravens.com/ravenstown/cheerleaders/appearances.html> (\$300 an hour per cheerleader for corporate events); <http://www.titansonline.com/cheerleaders/cheerleader-appearances.html> (\$300 per hour per cheerleader); <http://www.colts.com/cheerleaders/cheerleader-appearances.html> (2 cheerleaders for 2 hours is \$850). All sites last accessed February 10, 2014.

37. On days that the Cincinnati Bengals played a home game, Plaintiff was required to arrive at Paul Brown Stadium several hours before kickoff and stay until after the game was completed.

38. For example, if the Bengals were playing a 1:00 p.m. home game, Plaintiff was required to meet the other cheerleaders in a local parking lot at 7:45 a.m. in full hair and makeup. The Ben-Gals would then carpool to the stadium and arrive at 8:00 a.m.

39. After arriving at the stadium, the Ben-Gals typically practice twice prior to the game. They also must meet with fans at times and stadium locations selected by the Defendant. As part of these appearances, they must sign autographs and take pictures with fans.

40. Although 30 Ben-Gals are on the squad, only 24 are selected to perform during a game.¹⁵ The 6 Ben-Gals that are not chosen to cheer must still arrive at the stadium with the other Ben-Gals, and must go through the pre-game activities and drills.

41. However, if a Ben-Gal is not selected to perform at a given game, she must spend the first half of the game visiting with fans in the luxury suites. At halftime she is permitted to leave, but is encouraged to stay and help with on-field activities.

42. If a Ben-Gal does not cheer during the game, but performs the duties described above, she is paid \$45 instead of the full \$90.

43. Because Plaintiff missed a game to attend a funeral, she was not selected to perform during the following game. Although she worked no fewer than 6 hours that day, she was only paid \$45, less than Ohio's minimum wage.

¹⁵ However, if Defendant believes that 24 Ben-Gals have not earned the right to cheer, it will utilize less than 24: "Practice and games are working sessions. Give 100% and don't just go through the motions or your position may be replaced or lost. 24 ladies cheer but less will be taken as necessary." See Exhibit B.

44. On the days that Plaintiff did cheer during the Bengals game, she left the stadium at approximately 5:00 p.m.

45. Even beyond the many uncompensated hours they work, Ben-Gal cheerleaders must expend their own money for transportation to and from mandatory appearances, and pay for specialized clothing (including required items such as certain shoes and tights, and a bathing suit for the calendar), makeup (including required items such as fake eyelashes), skin tanning, and other gear. Defendant's failure to pay for or reimburse the Ben-Gals for these required items further reduces their compensation below the minimum wage.

46. Even when Defendant does pay the Ben-Gal cheerleaders, it is not on a regular basis. Defendant only paid Plaintiff twice, on November 1, 2013 (over 22 weeks after the first mandatory practice and nearly 10 weeks after the first home game of the season) and January 10, 2014.

47. Ben-Gal cheerleaders are required to comply with all instructions and are not permitted to question "the person in authority." According to the Ben-Gal Rules, under the heading "Attitude and Behavior:"

- Insubordination- Webster defines this word as "not submitting to authority; disobedient." Syn. Rebellious, mutinous, defiant. **Insubordination to even the slightest degree IS ABSOLUTELY NOT TOLERATED!!! You will be benched or dismissed!!!**
- Authority- **ABSOLUTELY NO ARGUING OR QUESTIONING THE PERSON IN AUTHORITY!!!¹⁶**

48. Plaintiff followed Defendant's instruction not to question the person in authority, worked for Defendant for a full season, and then resigned at the end of the year.

¹⁶ See Exhibit B (emphasis in original).

49. The effect of Defendant's wage and hour policies and practices described above was to deny Plaintiff and every Cincinnati Ben-Gal cheerleader during the three years prior to the filing of this Complaint minimum wages in violation of 29 U.S.C. § 206, Article II, Section 34a of the Ohio Constitution, and O.R.C. § 4111.01, et seq.

50. Defendant was and is aware of the "countless hours" of work being performed by Cincinnati Ben-Gal cheerleaders at their direction and under their supervision. Despite this knowledge, Defendant has maintained its wage and hour policies and practices.

V. COLLECTIVE ACTION ALLEGATIONS

51. Plaintiff brings the FLSA claims under 29 U.S.C. § 216(b) as a collective action on behalf of the following opt-in Class (the "FLSA Class"):

All persons who were employed by Defendant as a Cincinnati Ben-Gal cheerleader at any time from February 10, 2011 through the present.

52. Plaintiff is similarly situated to all former and current Cincinnati Ben-Gals described in the FLSA Class.

VI. CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and as representatives of a class of similarly situated individuals who have been subjected to Defendant's violations of the minimum wage provisions of Article II, Section 34a of the Ohio Constitution and Ohio's Minimum Fair Wage Standards Act, O.R.C. § 4111.01 *et seq.* (the "Ohio Minimum Wage Class").

54. This class action is proper under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3). The requirements of Rule 23(a), (b)(2), and (b)(3) are met with respect to the Ohio Class defined below:

All persons who were employed by Defendant as a Cincinnati Bengal cheerleader at any time from February 10, 2011 through the present.

55. Although the precise number of the Ohio Minimum Wage Class members is unknown to Plaintiff, upon information and belief the number is at least 50, such that joinder is impractical. The disposition of each Ohio Minimum Wage Class member's claims through the class action procedure will benefit the parties, the Court, and society as a whole.

56. Plaintiff will fairly and adequately represent and protect the Ohio Minimum Wage Class members' interests, and is committed to the vigorous prosecution of this action.

57. Plaintiff has no conflicts of interest and has retained counsel who is competent and has experience in class actions, including wage and hour class actions.

58. Plaintiff's claims are typical of the Ohio Minimum Wage Class member's claims. Plaintiff and the Ohio Minimum Wage Class members work or have worked for Defendant and have been subjected to Defendant's wage and hour policies and practices which create a pattern or practice of failing to pay minimum wages and timely wages. Ohio Minimum Wage Class members are victims of the same actions and conduct of Defendant.

59. Common questions of law and fact exist as to all members of the Ohio Minimum Wage Class and predominate over questions affecting individual members of the Ohio Minimum Wage Class.

60. The common questions include, but are not limited to, the following:

- i) Whether Defendant denied Cincinnati Ben-Gal cheerleaders minimum wage by, among other things, compelling them to attend practices, “charity events,” and calendar photo shoots and promotional events without compensation;
- ii) Whether Defendant failed to pay Cincinnati Ben-Gal cheerleaders in a timely manner;
- iii) Whether Defendant’s conduct was willful;
- iv) Whether Defendant’s conduct as described above violates Article II, §34a of the Ohio Constitution governing payment of minimum wages;
- v) Whether Defendant’s conduct as described above violates Article II, Section 34(a) of the Ohio Constitution governing an employers’ duty to maintain records for each employee; and
- vi) Whether Defendant’s conduct violates the Ohio Minimum Fair Wage Standards Act.

61. As noted above, Defendant has acted on grounds that apply generally to the Ohio Minimum Wage Class, so that final injunctive and/or declaratory relief is appropriate respecting the Ohio Minimum Wage Class as a whole.

62. A class action is appropriate because the common questions of law and fact enumerated above predominate over questions affecting only individual members of the Ohio Minimum Wage Class.

63. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted in this action, as the financial interest of each individual Ohio

Minimum Wage Class member is relatively small, making it economically impracticable to pursue remedies other than by a class action. As such, the Ohio Minimum Wage Class members have little interest in individually controlling the prosecution of separate actions.

64. If individual actions were to be brought by the members of the Ohio Minimum Wage Class, the resulting duplication of lawsuits would cause undue hardship, inefficiencies, and expense to the Court and the litigants, and the nature of the claims is such that it is unlikely that many such claims would be pursued other than on a class basis.

65. Given the above considerations, it is desirable to concentrate the litigation of the claims in this particular forum.

66. Absent a class action, Defendant would likely retain the benefits of its wrongdoing, resulting in a miscarriage of justice.

67. There will be no difficulties in managing this class action as the names and addresses of the persons who are members of the Ohio Minimum Wage Class are available from Defendant. Further, notice can be provided to the members of the Ohio Minimum Wage Class by using techniques and a form of notice similar to those customarily used in class actions including individual mailed notice and notice by publication, as appropriate.

VII. STATEMENT OF CLAIMS

Count One

Denial of Minimum Wages under the FLSA, 29 U.S.C. § 206

68. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

69. Defendant's denial of minimum wages for hours worked violates the FLSA, including but not limited to the minimum wage provisions of 29 U.S.C. § 206.

70. Plaintiff and members of the FLSA Class are entitled to recover from Defendant an appropriate amount for all hours worked, for a period of two years prior to the filing of this action, together with liquidated damages in an amount equal thereto, and attorney fees pursuant to 29 U.S.C. § 216(b).

Count Two

Willful violation of FLSA, 29 U.S.C. § 255(a)

71. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

72. Defendant's conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) such that Plaintiff and members of the FLSA Class are entitled to recover from Defendant an appropriate amount for all hours worked including minimum wages during the period beginning three years prior to the commencement of this action together with liquidated damages in an amount equal thereto and attorney fees pursuant to 29 U.S.C. § 216(b).

Count Three

Retaliation, under the FLSA, 29 U.S.C. § 215(a)(3)

73. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

74. Plaintiff and members of the FLSA Class are entitled to appropriate equitable relief pursuant to 29 U.S.C. §§ 215(a)(3) and 216(b), including without limitation an order enjoining Defendant from retaliating against Plaintiff or any other employees who may join in or assist this action or have sought or requested payment in accordance with applicable law.

Count Four

Denial of Minimum Wages under Article II, § 34a of the Ohio Constitution

75. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

76. Under the Article II, § 34a of the Ohio Constitution, Defendant was required to pay Plaintiff and members of the Ohio Minimum Wage Class the legally-required minimum wage for all hours worked.

77. Defendant's conduct as described above violates Article II, §34a of the Ohio Constitution governing payment of minimum wages.

78. Defendant has willfully and with reckless disregard deprived Plaintiff and members of the Ohio Minimum Wage Class of the payment of minimum wage compensation under Article II, § 34a of the Ohio Constitution, which entitles Plaintiff and others similarly situated to liquidated and/or punitive damages and other appropriate relief.

Count Five

Denial of Minimum Wages under the Ohio Minimum Fair Wage Standards Act

79. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

80. Under the Ohio Minimum Fair Wage Standards Act ("OMFWSA"), O.R.C. § 4111.01 et seq., Defendant was required to pay Plaintiff and members of the Ohio Minimum Wage Class the legally-required minimum wage for all hours worked.

81. Defendant's conduct as described above violates the OMFWSA provisions governing payment of minimum wages.

82. Defendant has willfully and with reckless disregard deprived Plaintiff and members of the Ohio Minimum Wage Class of the payment of minimum wage compensation

under the OMFWSA, which entitles Plaintiff and others similarly situated to liquidated and/or punitive damages and other appropriate relief.

Count Six

Unjust Enrichment/ Quantum Meruit

83. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

84. Plaintiff and members of the Ohio Minimum Wage Class conferred a benefit upon Defendant when they worked hours and provided services to Defendant, and performed such other acts and conduct for Defendant's benefit.

85. The benefits were conferred by Plaintiff and members of the Ohio Minimum Wage Class without receiving just compensation from Defendant for the services rendered.

86. Defendant has been unjustly enriched by the benefits conferred by Plaintiff and members of the Ohio Minimum Wage Class.

87. Plaintiff and members of the Ohio Minimum Wage Class are entitled to just compensation for the reasonable value of services rendered to Defendant.

Count Seven

Failure to Pay Semi-monthly Wages Due, O.R.C. § 4113.15

88. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

89. During the three-year period preceding the filing of this Complaint, Defendant breached Ohio Revised Code Section § 4113.15(A) by failing to pay Plaintiff and members of the Ohio Minimum Wage Class (1) on or before the first day of each month for all wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and

(2) on or before the fifteenth day of each month all wages earned by them during the last half of the preceding calendar month.

90. Defendant is liable for the unpaid wages described above and for additional amounts as interest as provided by O.R.C. § 4113.15(B).

Count Eight

Failure to Maintain Wage and Hour Records, Article II, §34(a) of the Ohio Constitution

91. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

92. Article II, Section 34a of the Ohio Constitution requires employers to maintain records for each employee showing that employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to an employee for a period of not less than three years following the last date that the employee was employed.

93. Because Defendant compensated Plaintiff and members of the Ohio Minimum Wage Class at a flat rate of either \$90 or \$45 per home football game, Defendant does not and did not maintain records for each employee showing that employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to an employee for a period of not less than three years following the last date that the employee was employed.

94. By failing to create, keep, and preserve proper wage and hour records, Defendant has violated Article II, Section 34a of the Ohio Constitution.

95. Defendant is liable for the attorney fees and costs of Plaintiff and members of the Ohio Minimum Wage Class incurred as a result of its failure to comply with Article II, Section 34a of the Ohio Constitution.

Count Nine

Failure to Maintain Wage and Hour Records, O.R.C. § 4111.08

96. Plaintiff repeats and reiterates the previous paragraphs as if fully rewritten herein.

97. Ohio Revised Code § 4111.08 requires Defendant to make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee.

98. Because Defendant compensated Plaintiff and members of the Ohio Minimum Wage Class at a flat rate of either \$90 or \$45 per home football game, Defendant does not and did not maintain records for each employee showing that employee's name, address, and occupation, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee.

99. By failing to create, keep, and preserve proper wage and hour records, Defendant has violated Ohio Revised Code § 4111.08.

100. Defendant is liable for the attorney fees and costs of Plaintiff and members of the Ohio Minimum Wage Class incurred as a result of its failure to comply with Ohio Revised Code § 4111.08.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all other similarly situated employees of Defendant who elect to opt-in to this FLSA action as described with particularity in 29 U.S.C. § 216(b), and also those who are encompassed by the Rule 23 class definition described above in paragraph 54, demand judgment against the Defendant as follows:

1. An Order Permitting this litigation to proceed as a collective action;
2. Prompt notice, pursuant to 29 U.S.C. § 216(b), to all similarly situated employees of Defendant that this litigation is pending and that they have right to “opt-in” to this litigation;
3. Judgment against Defendant for violating the Fair Labor Standards Act;
4. An Order declaring that the Defendant’s violations of the Fair Labor Standards Act were willful;
5. An order enjoining Defendant from retaliating against Plaintiff or any other employees who may join in or assist this action or have sought or requested payment in accordance with applicable law;
6. An award of unpaid wages and liquidated damages thereon consistent with the provisions of the Fair Labor Standards Act;
7. An award of Plaintiff’s reasonable attorneys’ fees and costs;
8. With respect to the Ohio Minimum Wage Class:
 - a. For an order certifying the Class, pursuant to Rule 23, appointing Plaintiff as representative of the Class, and appointing the law firms representing Plaintiff as counsel for the Class;
 - b. An award of damages and liquidated damages;
 - c. Pre-judgment and post-judgment interest, as provided by law;
 - d. Such other injunctive and equitable relief as the Court may deem just and proper; and
 - e. Reasonable costs and attorneys’ fees.

9. Such other relief which in law and equity is appropriate.

Respectfully submitted,

GOLDENBERG SCHNEIDER, LPA

/s/Jeffrey S. Goldenberg

JEFFREY S. GOLDENBERG (Ohio Bar No. 0063771)

TODD B. NAYLOR (Ohio Bar No. 0068388)

One West Fourth Street, 18th Floor

Cincinnati, Ohio 45202

Telephone (513) 345-8291

Telecopier (513) 345-8294

jgoldenberg@gs-legal.com

tnaylor@gs-legal.com

Trial Attorneys for Plaintiffs

MINNILLO & JENKINS, Co. LPA

/s/Christian A. Jenkins

CHRISTIAN A. JENKINS (Ohio Bar No. 0070674)

JOHN J. WILLIAMS (Ohio Bar No. 0041466)

2712 Observatory Avenue

Cincinnati, Ohio 45208

Telephone (513) 723-1600

Telecopier (513) 723-1620

cjenkins@minnillojenkins.com

jjwilliams@minnillojenkins.com

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable in this matter.

/s/Todd B. Naylor

TODD B. NAYLOR (Ohio Bar No. 0068388)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEXA BRENNEMAN : CASE NO:
individually, and on behalf of all those : JUDGE
similarly situated, :
Plaintiff, :
vs. :
CINCINNATI BENGALS, INC. :
Defendant. :

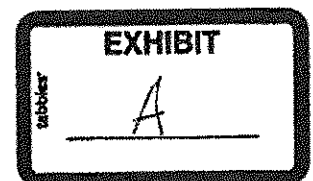
1. The undersigned hereby consents to joining the above-captioned action to bring a claim under the Fair Labor Standards Act ("FLSA") and Ohio law against my current/former employer, the Cincinnati Bengals, Inc. ("Defendant") to recover unpaid minimum wages.

2. During the time that I worked for Defendant, I was paid less than minimum wages for all hours worked.

3. I understand that I may withdraw my consent to proceed with my claims at any time by notifying the attorneys handling the matter.

Date: 2/7/2014 Signature: *Alexa Breneman*

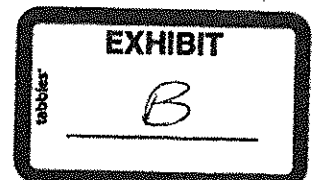
Print Name: Alexa Breneman



CINCINNATI BEN-GAL RULES

Practice and Games

1. Practices are held promptly at 7:00 and ending between 9:30-10:00 pm every Tuesday and Thursday through the end of the season. Practice in the gym or outside will start promptly at 7:00, therefore weights will need to be taken prior to start time.
2. There will be 3 practices per week in the month of July/August prior to the pre-season games.
3. You may only miss 4 practices the entire season. Two tardy practices equal an absence. 16 minutes (or more) late equals an absence. Technically, 4 absences and 1 tardy can be missed. A total of 5 absences results in termination. Exemption: Your wedding. 1 practice week (meaning 2 practices) will be excused. If your wedding is during the summer and you miss a mandatory practice, it will not count against you. If a game is missed due to the wedding, rule #7 applies.
4. You are expected to attend ALL mandatory practices. Missing mandatory practices will result in the following:
 - If you miss a mandatory, non game week practice, you will sit out 1 game.
 - If you miss a mandatory practice, during game week, you will sit out 2 games.
 - If you miss 2 mandatory, non game week practices, you will sit out 2 games.
 - If you miss 2 mandatory, game week practices, you will sit out 3 games.
 - Sitting out 3 games is the most you can miss.
5. If for any reason you opt to leave the team mid season you will not be able to try out the following year.
6. You **MAY NOT** miss any practices the week before a game! Participation is mandatory at practice. Less than 100% participation (example: mocking leaps, turns, dances, etc.) or sitting on the sideline with an injury or illness does not mean participation.
7. Special circumstances that result in missing more than the allotted 4 excused absences must be discussed with the director. Individuals wanting to tryout the following year must continue to participate at practices and charity events throughout the current season.
8. Not participating at any given practice (this includes pre-game) results in an absence. **Last minute changes at practice or before a game will be made.** This rule applies during a game. If an illness occurs on the field during the game, your captain will dismiss you. **Only** if an emergency occurs, quietly exit the field in a professional manner and a field assistant will help you into the locker room. Sitting on the sideline is unacceptable! Leaving the field during the game for any reason is a game missed.



9. **Charities-** Every cheerleader is required to sign up for a minimum of 12 charity events during the season in order to be chosen for paid job and appearances. A mix of rookies and veterans are expected to participate in every charity event. For those of you trying out the following year you will be required to do an additional 3 appearances during the off season. To be considered for the first game, vets are required to have completed 3 charity appearances by August 1st and 5 by September 10th.
10. **Fitness Program-** An overall fit physique is very important to maintain throughout the season.
- Scale weight is recorded twice per week. This data is collected to determine ideal weight.
 - You are given a 3 lb leniency weight. (example- if your goal weight is 114, you are allowed to weigh in at 117 without being considered over)
 - Weight is a constant evaluation process throughout the season your scale weight is taken into consideration along with overall body appearance to determine cheer eligibility.
 - If you are over your 3 lb leniency weight, you will be required to stay 30 minutes after practice for extra conditioning. Additionally, at management's discretion, you can/will be pulled from your position and possibly not considered for charity/paid events.
 - Ideal Weight and recommendations for physique improvements will be provided in Glamour Evaluation. Achieving these expectations is required. Failure to comply with evaluation may result in missed games and/or performance events.
 - Each practice will include cardio, toning, and stretching. Full participation is expected.
 - Discounted gym memberships will be available for training outside of practice.
 - Nutrition guidelines are also provided. Guidelines will be based on Food Pyramid that will include suggestions for meals, snacks, and selections when dining out. Maintaining your goal weight should be done so in a healthy manner. See Fitness Coach for any tips or advice.
 - Focus on your **OWN** weight and do not compare your weight with other girls. Each weight is determined individually.
 - If you are benched for weight violations for more than two games and/or team events, you will be put on weight probation for three weeks. During the probation period, you will be under strict evaluation. If no improvements are shown, you can/will be dismissed from the team. Upon notification of probation, you must turn in your uniform. In addition, you cannot represent the team in charity events, suites or paid appearances. If probationary requirements are met within the three week timeframe, your uniform will be returned. If probationary requirements are NOT met in the three week timeframe, your uniform deposit will be returned.

11. Promptness is a MUST!!

- Pre-game practice is determined prior to each game. If you are late or not ready for pre-game practice (example: not dressed in game day practice gear or getting treatment), you will not cheer.
- All fittings with the seamstress apply to the above. A late fitting, counts as a tardy and a missed fitting, counts as an absence.
- Charity events and other jobs or functions apply to the above. Being late counts as a tardy and a miss or cancellation counts as an absence. You are responsible for finding a replacement if need be.
- All scheduled appointments with officers (captain, choreographer, etc.) apply to the above. Being late to a meeting with an officer counts as a tardy; a missed appointment with an officer without due notice to reschedule counts as an absence. Due notice means at least one day notice. If a same-day appointment is called, due notice is 2 hours.

12. Attitude and Behavior

- The Cincinnati Ben-Gals do more outside appearances than on the field appearances. When at a Bengal represented event, your behavior should uphold the integrity of the organization at ALL TIMES. No individual self attention type behavior will be acceptable or excusable. You are now in the public eye. Moral decisions and professional behavior/appearance must be upheld.
- Absolutely no talking among yourselves during teaching. Strict attention and concentration are required at all times. We are only as good as our weakest link! Work with each other, not against each other, and stay positive with constructive criticism. Please respect those in authority and each other.
- Practice and games are working sessions. Give 100% and don't just go through the motions or your position may be replaced or lost. 24 ladies cheer but less will be taken as necessary.
- Insubordination- Webster defines this word as "not submitting to authority; disobedient" Syn. Rebellious, mutinous, defiant. **Insubordination to even the slightest degree IS ABSOLUTELY NOT TOLERATED!!! You will be benched or dismissed!!!**
- Authority- **ABSOLUTELY NO ARGUING OR QUESTIONING THE PERSON IN AUTHORITY!!!** The person in authority is considered the person in charge and demands your respect. Authority includes: Director, Head Coach, Asst Coach, Side Captains, Captains, Choreographers, Hair and Makeup Artist, Dressing Room Assistants, Field Assistants, Event Coordinators, etc.

13. IMMEDIATE DISMISSAL:

- Going into the Bengals locker room. This is completely off limits!! If anyone goes into the locker room for any reason at any time- **YOU WILL BE DISMISSED FROM THE TEAM!!** There will be absolutely **NO EXCEPTIONS.**
- No fraternizing with the Bengals players or Bengals personnel. This includes any personal invitations.
- Illegal drug use at any time.
- Dancing or performing with any other group, participating in beauty pageants, modeling lingerie, or bathing suits, adult entertainment, etc.
- Wearing uniform (including taking pictures) or doing a paid job affiliated with the Bengals without being cleared with the director and/or the Cincinnati Bengals.
- Teaching outside Bengals affiliation. All dances and cheers are the property of the Cincinnati Bengals. The dances and cheers are not to be used or taught for any reason outside the team. NO exceptions.

IF YOU ARE DISMISSED FROM THE TEAM FOR ANY REASON, YOU WILL NOT BE PERMITTED TO TRY OUT IN THE FUTURE FOR THE CINCINNATI BENGALS.

14. **Appearance-** Professional attire and glamour is expected at ALL TIMES!!

- Well groomed hair and makeup is expected at ALL TIMES (practices performances, appearances)! Media may appear at any time.
- No gum chewing, smoking, drinking alcoholic beverages while representing the Bengals at any function, job, or charity event. You will be dismissed as necessary.
- No panties are to be worn under practice clothes or uniform, not even thong panties. Wear pantyhose to match skin tone (L'eggs). No Danskins/Dance type tights. No control top at practices or games. No exposed skin at ankles – pantyhose must extend down into socks .
- No slouching breasts. Support as needed. Black or nude seamless bra mandatory for games. (No lace)
- **No tattoos exposed at any time.** Covering with band-aids is unacceptable. Covering all tattoos exposed is mandatory prior to every event including practice. Disciplinary action will be taken.
- **No belly button rings, additional body piercing,** jewelry or glitter to be worn with uniform. This includes practices, jobs, functions, charity events, etc. Jewelry is to be kept at a minimum. Exceptions: wedding band, stud earrings (none dangling or bigger than earlobe size), and a watch (not during games or events with uniform). Disciplinary action will be taken after 1 verbal reminder.
- Stay away from frosted lip sticks and eye shadows. Management will determine your proper color analysis.

- No glasses, contacts only. Contacts must be worn at all times. Unless a problem occurs and has been cleared and approved by management.
- No curlers. Hair must be neat and out of face on every occasion. Glamour is a priority!
- A change of hair and makeup is required as Director feels necessary. Professional hair stylist and Makeup Artist will work with you to achieve desired look.
- Rehearsal Attire- spandex shorts and spandex bras on Tuesdays and Thursdays. White (below the ankle) socks. No extra clothing permitted (example: jackets, warm ups, etc.). Bring practice and game poms to all practices. You will also need to bring a pair of "running/workout" shoes for conditioning session. These sessions are included in every practice and will be strenuous. Dance shoes may cause injuries and 100% participation is required. Rules apply as above for practice participation, because this is not an optional session.

15. Attire and Uniforms

- Charity Event Attire - Arrive to events either in a dressy outfit or in issued attire as instructed. Reminder: **NO tattoos or body piercings are to be exposed at any time as stated above.** There are no exceptions!! Do not wear excess jewelry, colored gym shoes etc. This will not be tolerated and you will be sent home.
- Game Attire- A game day pack list will be provided, however, you must still listen for announcements on specific uniforms that are mandatory for particular game. You **WILL NOT** cheer without proper attire, so be sure you know what is being worn that day.
- Uniforms- worn only at games or with permission at appearances through Director.
 1. A uniform deposit will be collected at time of issuance. This deposit will be returned to you upon management's receipt and approved inspection of issued uniform pieces at the end of the season of your last year.
 2. No pins or objects shall be placed on uniform unless Director or seamstress approves.
 3. Bengal seamstress only makes alterations and designated meeting time. If alterations need to be made, seamstress must be given ample amount of time prior to game week.
 4. Follow special care instructions given by seamstress. Keep poms away from heat (do not leave in car trunk or sunlight.) Damage or negligence is your responsibility and a fee will be given. A fee will be collected for uniforms that are not turned in on time at the end of the season.

16. Stadium-

- Practices are closed. No visitors, including past team members and staff are permitted in team practices. Cheerleaders **ARE NOT** permitted to give gate security code to anyone.

- Parking at stadium will be in tunnel only. No parking in front of garage doors, by fence areas, in Bengals Player designated parking spots or in medical parking area. This is at all times including practice days.
- Upon entering stadium, no loitering around security or vending area. This includes waiting on players for autographs.
- No visitors in the locker room/practice area unless cleared in advance with Director.
- Rehearsal- change into practice clothes in locker room, or bathroom before scheduled practice time. NO EXCEPTIONS on late arrivals.
- No leaving the locker room after arriving on game day.
- Bring water and nourishments as needed. Please use the bathroom before practice time.
- No part of uniform is to be worn to/from stadium or events. In other words, DO NOT WEAR UNIFORM WHILE TRAVELING IN A MOTOR VEHICLE.
- Pre-game- be ready to go when locker room attendants' call. You may not stop and talk with ANYONE on your way to or from the locker room.
- Absolutely no one is permitted to go into the back closet in the gym. This area is completely off limits unless instructed.

17. Internet-

- Social Networking- Accounts with Twitter, Facebook, or other types of personal social networking websites are permitted, however, content on these sites must remain tasteful and representative of the organization. In order to help maintain the reputation we've worked so hard to build, Deanna (Patterson) Hazeley (D34NN4_P on Twitter) MUST be saved as a friend or approved to follow, even on accounts marked "Private." Accounts will be monitored randomly and if at any time subject matter needs to be removed, you will be notified via phone call and expected to comply immediately. Your status updates are a constant reflection of the squad so please be careful what you post in the heat of the moment. You may be asked to remove your social networking site if it becomes an issue.
- Video Uploading- Absolutely no Ben-Gal material or personal/private Ben-Gal footage is permitted to be uploaded. Included but not limited to YouTube and Facebook.
- Website Pictures- All pictures submitted for Bengals.com need to be approved by management. No photo material is permitted to be sent directly to the web master.

ALL DISCIPLINARY ACTION IS SUBJECT TO CHANGE AT DIRECTOR'S DISCRETION.

Remember: You are now in an elite professional organization. You are a role model for the community and must conduct yourself in a professional manner. Your positive contribution and overall presentation will secure a position with the Cincinnati Bengals.