

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

<b>LAUREN HERINGTON, Individually, and on Behalf of All Others Similarly Situated,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Case No. 15-cv-1152</b>
<b>v.</b>	)	
	)	
<b>MILWAUKEE BUCKS, LLC, formerly known as, MILWAUKEE BUCKS, INC.</b>	)	
	)	<b>(JURY TRIAL DEMANDED)</b>
<b>Defendants.</b>	)	

**COMPLAINT**

The named Plaintiff, Lauren Herington, individually and on behalf of all other similarly situated employees, by and through her counsel, brings claims as a Collective Action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§201 *et seq.* (the “FLSA”), and as a Class Action pursuant to the Federal Rules of Civil Procedure, Rule 23 and in accordance with Wisconsin state wage and hour law against Defendants Milwaukee Bucks, LLC f/k/a Milwaukee Bucks Inc., its subsidiaries and affiliates, and alleges, upon personal belief as to herself and her own acts, and as for all other matters, upon information and belief, and based upon the investigation made by her counsel, as follows:

**NATURE OF THIS ACTION**

1. The named Plaintiff, Lauren Herington, brings this action on behalf of herself and other Milwaukee Bucks dance team members and cheerleaders (collectively, “Bucks Dancers”) pursuant to the FLSA, Wisconsin Minimum Wage Law (the “WMWL”), and Wisconsin Wage Payment, Claims and Collections (the “WWPCC”) seeking to recover: (a) unpaid minimum wages for work they performed, but were not paid minimum wage; (b) unpaid overtime wages

for time worked in excess of 40 hours per week; (c) liquidated damages; (d) increased wages; (e) injunctive relief; and (f) reasonable attorney's fees and costs.

2. Bucks Dancers perform at home games, make appearances at corporate functions, charity events and other community activities, and appear in an annual swimsuit calendar and other photo shoots and publications. They are required to arrive 2.5 hours before home game start times; practice 5-10 hours per week; and attend approximately 15-20 hours of mandatory workout sessions each week. Additionally, they are required to spend time each week complying with Defendants' appearance policies which mandate salon visits, haircuts, tanning sessions, uniform maintenance and other work, for which they are not paid and which require them to incur significant unreimbursed out-of-pocket expenses.

3. Despite all the above work requirements, Defendants only paid the named Plaintiff and other Bucks Dancers a flat rate of \$65 per home game; \$30 for practices and \$50 for special appearances. The named Plaintiff and class members were not paid anything for mandatory workouts, complying with appearance or "image" requirements, uniform maintenance and other work they were required, encouraged, suffered and/or permitted to perform.

4. As a result of the many hours the named Plaintiff and other Bucks Dancers were permitted to work each week and the extremely low, sub-minimum wages paid by the Bucks in return, the named Plaintiff and class members were paid far less than the required federal and Wisconsin minimum wage in most, if not all workweeks.

### **JURISDICTION AND VENUE**

5. This Court has subject-matter jurisdiction over this action pursuant to 29 U.S.C. §216(b), which provides that suit under the FLSA "may be maintained against any employer ... in any

Federal or State court of competent jurisdiction.” The named Plaintiff has signed an opt-in consent form to join this lawsuit (Exhibit A).

6. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §1331.

7. This Court has supplemental jurisdiction over the named Plaintiff’s state law claims pursuant to 28 U.S.C. §1367.

8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because Defendants resides in and conducts business within this District. In addition, a substantial part of the events and omissions giving rise to the claims pleaded in this Complaint occurred within this District.

### **PARTIES**

9. Lauren Herington worked for Defendants as a Bucks Dancer during the applicable statute of limitations period. She was employed by Defendants as an “employee” as defined by Section 3(e)(1) of the FLSA, 29 U.S.C. §203(e)(1) and by Section 104.01(2) of the WMWL, Wis. Stat. Ann. § 104.01(2) and was classified as non-exempt from the protections of the FLSA and Wisconsin wage and hour laws.

10. Lauren Herington brings this case on behalf of herself and other similarly situated employees who currently work, or who previously worked, as “Dance Team Members”, “Cheerleaders”, “Bucks Dancers” or any other similarly titled position at any time during the applicable statutory periods for the Defendants.

11. Defendants Milwaukee Bucks, LLC and Milwaukee Bucks, Inc. own and manage the Milwaukee Bucks professional basketball team. Additionally, it offers sports, entertainment and retail services in the state of Wisconsin and is an “employer” within the meaning of 29 U.S.C. §203(d) of the FLSA and of Wis. Stat. Ann. § 104.01(3).

## **FACTUAL BACKGROUND**

12. The named Plaintiff and class members are individuals who have worked for Defendants as Bucks Dancers or any other similarly titled position during the statutory period. The named Plaintiff and class members all shared similar job titles, training, job descriptions, job requirements and compensation plans, amongst other things.

13. Defendants managed the named Plaintiff's and class members' work, including the amount of hours they worked. Defendants dictated, controlled and ratified the wage and hour and all related employee compensation policies.

14. The named Plaintiff and all class members were classified by Defendants as non-exempt under the FLSA and Wisconsin wage laws.

15. Pursuant to its common scheme, Defendants paid the named Plaintiff and other class members a flat rate of \$65 per game, \$30 per practice and \$50 per appearance.

16. Despite the requirement to do so, Defendants failed to keep accurate records of the time actually worked by the named Plaintiff and class members.

17. Defendants violated federal and state wage laws in several common ways. First, Defendants failed to pay the named Plaintiff and class members the requisite minimum wage for all hours worked under 40 hours per week. Specifically, and without limitation, Defendants did not pay the named Plaintiff or class members any compensation for time worked during mandatory workouts or complying with mandatory appearance requirements and maintaining uniforms as required by Defendants. When one includes all time worked by the named Plaintiff and other class members each week, their compensation falls well below the required federal and state minimum hourly wage.

18. Second, Defendants required the named Plaintiff and other class members to incur out-of-pocket expenses for mandatory salon visits, dry-cleaning and other uniform maintenance and travel expenses to and from games, appearances and other obligations, all of which further reduced the hourly pay received by the named Plaintiff and other class members below the minimum wage requirement.

19. Third, Defendants did not pay the named Plaintiff and class members for any overtime hours actually worked at a rate of one and one half times their regular rate of pay.

20. Defendants knew, and were at all times aware, of the above-mentioned violations.

21. The conduct alleged above reduced Defendants' labor and payroll costs.

22. The named Plaintiff and class members were subject to Defendants' uniform policies and practices and were victims of Defendants' schemes to deprive them of minimum wages and overtime compensation. As a result of Defendants' improper and willful failure to pay the named Plaintiff and class members in accordance with the requirements of the FLSA and Wisconsin wage and hour laws, the named Plaintiff and class members suffered lost wages and other damages.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

23. The named Plaintiff, Lauren Herington, brings this case as a collective action on behalf of herself and all other similarly situated individuals pursuant to 29 U.S.C. §216(b) to recover unpaid minimum wages, unpaid overtime compensation, liquidated damages, statutory penalties, attorneys' fees and costs, and other damages owed.

24. The proposed opt-in collective class of similarly situated persons is defined as:

All individuals who were employed or who are currently employed by Defendants, its subsidiaries and/or affiliated companies as a Bucks Dancer or any other similarly titled position at any time during the relevant statute of limitations period.

25. This action is properly maintained as a collective action because the named Plaintiff is similarly situated to the members of the collective class with respect to job title, job description, training requirements, job duties, Defendants' failure to pay minimum wage and overtime and the wage and hour violations alleged in this Complaint, amongst other things.

26. Defendants encouraged, suffered and permitted the named Plaintiff and the collective class to work more than forty (40) hours per week without the proper overtime compensation.

27. Defendants knew that the named Plaintiff and the collective class performed work that required additional wages and overtime compensation to be paid. Nonetheless, Defendants operated under a scheme, as described above, to deprive the named Plaintiff and the collective class of wages and overtime compensation.

28. Defendants' conduct, as alleged herein, was willful and has caused significant damage to the named Plaintiff and the collective class.

29. Defendants are liable under the FLSA for failing to properly compensate the named Plaintiff and the collective class. The named Plaintiff requests that the Court authorize notice to the members of the collective class to inform them of the pendency of this action and their right to "opt-in" to this lawsuit pursuant to 29 U.S.C. §216(b), for the purpose of seeking unpaid wages, unpaid overtime compensation, liquidated damages under the FLSA, and the other relief requested herein.

30. The named Plaintiff estimates that there are at least 40 members of the collective class. The precise number of collective class members can be easily ascertained by using Defendants' payroll and personnel records. Given the composition and size of the class, members of the collective class may be informed of the pendency of this action directly via U.S. mail, e-mail and by posting notice in Defendants' training facilities.

## **CLASS ALLEGATIONS**

31. The named Plaintiff brings claims for relief on her own and as a class action pursuant to Rule 23(a) and Rule 23(b). The class is defined as:

All individuals who were employed or who are currently employed by Defendants, its subsidiaries and/or affiliated companies as a Bucks Dancer or any other similarly titled position at any time during the relevant statute of limitations period.

32. This action is properly maintainable as a class action because:

- a. The class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact that are common to the class;
- c. The claims or defenses of the named Plaintiff are typical of the claims or defenses of the class; and,
- d. The named Plaintiff will fairly and adequately protect the interests of the class.

### **Numerosity**

33. On information and belief, the total number of putative class members represents at least one hundred individuals. The exact number of class members may be determined from Defendants' records.

### **Commonality**

34. There are numerous and substantial questions of law and fact common to members of the stated class including, but not limited to, the following:

- a. Whether Defendants failed to keep true and accurate time records for all hours worked by the named Plaintiff and class members;
- b. Whether Defendants failed to compensate the named Plaintiff and class members minimum wage for all the work they required, encouraged or permitted class members to perform;
- c. Whether the named Plaintiff and class members incurred expenses that further reduced their rate of pay below the requisite minimum hourly wage;

- d. Whether Defendants failed to pay class members all compensation rightfully owed;
- e. Whether Defendants failed to compensate class members for all work performed in excess of 40 hours per work week with overtime premium wages; and,
- f. Whether the Defendants willfully failed to comply with state wage and hour laws.

35. The named Plaintiff anticipates that Defendants will raise defenses that are common to the class.

**Adequacy**

36. The named Plaintiff will fairly and adequately protect the interests of the class. She has retained experienced counsel that are competent in the prosecution of complex litigation and who have experience acting as class counsel specifically in wage and hour litigation.

**Typicality**

37. The claims asserted by the named Plaintiff are typical of the class members she seeks to represent. The named Plaintiff has the same interest and suffers from the same injuries as the class members.

38. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, she can "opt out" of this action pursuant to Rule 23.

**Common Questions of Law and Fact Predominate and a Class Action is Superior to Joinder of Claims or Individual Lawsuits**

39. The numerous common questions of law and fact set forth in the commonality discussion above predominate over individual questions because Defendants' alleged underlying activities



and impact of their policies and practices affected class members in the same manner: they were subjected to a policy of suffering work without pay.

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy because the individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expenses if these claims were brought individually. Moreover, as the damages suffered by each class member may be relatively small, the expenses and burden of individual litigation would make it difficult for plaintiffs to bring individual claims. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests.

## **COUNT I**

### **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

41. The named Plaintiff incorporates by reference all preceding paragraphs.

42. The named Plaintiff and other Bucks Dancers are similarly situated individuals within the meaning of the FLSA, 29 U.S.C. §216(b).

43. Section 206(a)(1) of the FLSA requires employers to pay employees a minimum wage not less than \$7.25 per hour.

44. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to at least 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 hours per week.

45. The named Plaintiff and other class members worked regular hours each week for which they were not paid a minimum wage.

46. The named Plaintiff and class members worked in excess of 40 hours per week for the Defendants, but were not properly paid overtime wages in violation of the FLSA.

47. Through its actions, policies and practices, Defendants violated the FLSA by regularly and repeatedly failing to compensate the named Plaintiff and other Bucks Dancers for all actual overtime worked at the proper rate of pay.

48. Defendants violated the FLSA by regularly and repeatedly failing to properly compensate the named Plaintiff and class members for the actual time they worked each week.

49. Defendants also willfully failed to pay minimum wages, overtime pay and other benefits to the named Plaintiff and class members by failing to keep accurate time records to avoid paying them minimum wages, overtime wages and benefits.

50. The foregoing actions of Defendants violated the FLSA.

51. Defendants' actions were willful and not in good faith.

52. As a direct and proximate cause of Defendants' unlawful conduct, the named Plaintiff and class members have suffered and will continue to suffer a loss of income and other damages.

53. Defendants is liable to the named Plaintiff and other members of the class for actual damages, liquidated damages and equitable relief, pursuant to 29 U.S.C. §216(b), as well as reasonable attorneys' fees, costs and expenses.

54. The named Plaintiff and class members are also entitled to injunctive relief to prevent Defendants from continuing its violation of the FLSA and other appropriate class-wide injunctive relief.

## COUNT II

### VIOLATION OF WISCONSIN MINIMUM WAGE LAW

55. The named Plaintiff incorporates by reference all preceding paragraphs.

56. The named Plaintiff and class members are members of a class that meets the requirements for certification and maintenance of a class action pursuant to Rule 23.

57. Defendants are an “employer” and the named Plaintiff and class members are “employees” under the WMWL, Wis. Stat. Ann. § 104.01, *et seq.*

58. The WMWL, requires employers to pay employees minimum wages for all hours worked. Section DWD 274.03 of the Wisconsin Administrative Code requires employers to pay employees one and one half times their regular rate for all hours worked over forty (40) per work week.

59. Defendants violated WMWL, Wis. Stat. Ann. § 104.01, *et seq.*, by regularly and repeatedly failing to properly compensate the named Plaintiff and class members with minimum wages for the actual time they worked each week.

60. Defendants violated WMWL, Wis. Stat. Ann. § 104.01, *et seq.*, by failing to maintain accurate records of all hours worked by the named Plaintiff and class members.

61. Defendants also failed to pay overtime pay and other benefits to the named Plaintiff and class members.

62. As a direct and proximate result of Defendants’ unlawful conduct, the named Plaintiff and class members have suffered and will continue to suffer lost wages and other damages.

63. The named Plaintiff and class members are also entitled to injunctive relief to prevent Defendants from continuing their violation of these statutory provisions and other appropriate class-wide injunctive relief.

### COUNT III

#### **VIOLATION OF WISCONSIN WAGE PAYMENT, CLAIMS AND COLLECTIONS**

64. The named Plaintiff incorporates by reference all preceding paragraphs.

65. The named Plaintiff and class members are members of a class that meets the requirements for certification and maintenance of a class action pursuant to Rule 23.

66. Wisconsin Wage Payment, Claims and Collection (“WWPCC”), Wis. Stat. Ann. § 109.01, *et seq.*, requires employers to pay employees all wages earned by an employee during a monthly pay period no later than 31 days after the end of the pay period in which such wages were earned. The WWPCC also requires employers to pay the final compensation of separated employees in full no later than the next regularly scheduled payday for such employee.

67. The named Plaintiff and class members and Defendants entered into an agreement to pay the named Plaintiff and class members as non-exempt employees for all the time they worked, including overtime, as required by the WWPCC.

68. Defendants violated the WWPCC by regularly and repeatedly failing to properly compensate the named Plaintiff and class members for the actual time they worked each week.

69. Defendants failed to pay overtime pay and other benefits to the named Plaintiff and class members.

70. As a direct and proximate result of Defendants’ unlawful conduct, the named Plaintiff and class members have suffered and will continue to suffer lost wages and other damages.

71. The named Plaintiff and class members are also entitled to injunctive relief to prevent Defendants from continuing their violation of these statutory provisions and other appropriate class-wide injunctive relief for the Wisconsin state sub-class.

## **PRAYER FOR RELIEF**

WHEREFORE, the named Plaintiff, LAUREN HERINGTON, individually and on behalf of all others similarly situated, by and through her attorneys demands judgment against the Defendants and in favor of the named Plaintiff and all others similarly situated, for a sum that will properly, adequately and completely compensate the named Plaintiff and class members for the nature, extent and duration of their damages, the costs of this action and as follows:

- A. Order the Defendants to file with this Court and furnish to counsel a list of all names, telephone numbers, email addresses and home addresses of all Bucks Dancers or any other similarly titled position who have worked for the Defendants within the last three years;
- B. Authorize Plaintiff's counsel to issue notice at the earliest possible time to all Bucks Dancers or any other similarly titled position who have worked for the Defendants within the last three years, informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they were deprived of minimum wages and overtime compensation, as required by the FLSA;
- C. Certify a class for Counts I, II, and III of all individuals who are currently employed and classified as non-exempt, Bucks Dancers or similarly titled positions or were so employed and classified by the Defendants, its subsidiaries or affiliated companies as non-exempt, Dance Team Members, cheerleaders or other similar positions performing similar responsibilities for the Defendants at any time during the relevant statute of limitations period.
- D. Appoint Stephan Zouras, LLP and Andresen & Associates, P.C. as counsel for the Plaintiffs;
- E. Declare and find that the Defendants committed one or more of the following acts:
  - i. Violated provisions of the FLSA by failing to pay minimum wages, overtime wages and other benefits to Plaintiff and similarly situated persons who opt-in to this action;
  - ii. Willfully violated provisions of the FLSA;
  - iii. Violated the Wisconsin Minimum Wage Law, Wis. Stat. Ann. § 104.01, *et seq.*, by failing to pay minimum wages and overtime wages to the named Plaintiff and class members; and,

- iv. Violated provisions of the Wisconsin Payments, Claims and Collection Act, Wis. Stat. Ann. § 109.01, *et seq.*, by failing to pay overtime wages to the named Plaintiff and class members.
- F. Award compensatory damages, including all pay owed and wrongful deductions made, in an amount according to proof;
- G. Award increased wages of 50% of wages due and unpaid;
- H. Award liquidated damages on all compensation due accruing from the date such amounts were due;
- I. Award all costs and reasonable attorneys' fees incurred prosecuting this claim;
- J. Grant leave to amend to add claims under applicable state and federal laws;
- K. Grant leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
- L. For such further relief as the Court deems just and equitable.

Dated: September 24, 2015

Respectfully Submitted,

s/LARRY A. JOHNSON

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