

**IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

YVETTE JOY LIEBESMAN, individually	)	
and on behalf of all others similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1622-CC00346
	)	
COMPETITOR GROUP, INC.,	)	
	)	
Defendant.	)	

**MOTION FOR SUMMARY JUDGMENT**

Defendant, Competitor Group, Inc. (“Defendant” or “CGI”), moves for summary judgment under Rule 74.04 on Plaintiff Yvette Joy Liebesman’s (“Plaintiff” or “Liebesman”) Petition for the following reasons.

1. On October 23, 2011 and October 21, 2012, CGI held the “St. Louis Rock ‘n’ Roll Marathons.”
  
2. CGI offered Big Shark Racing, Inc. (a Missouri non-for profit corporation) the opportunity to provide “bicycle escorts” to ride with the marathon’s lead runners.
  
3. Plaintiff, a St. Louis University Law Professor, volunteered to serve as a bicycle escort for each event. In exchange, Liebesman was promised a draw-string backpack and a t-shirt; both of which she received.
  
4. In September 2014, Liebesman filed the instant lawsuit against CGI.
  
5. Liebesman’s Petition alleges two counts against CGI: one count for minimum wages under the Missouri Minimum Wage Law (“MMWL”) and one count for “unjust

enrichment.”<sup>1</sup>

6. CGI is entitled to summary judgment on Plaintiff’s claim for minimum wages under the MMWL because the undisputed material facts demonstrate that Liebesman was not an employee under the MMWL and CGI was not her employer; to wit:

- a. There is no dispute that CGI did not have the power to hire or fire Plaintiff;
- b. There is no dispute that CGI did not supervise or control her work schedule;
- c. There is no dispute that CGI, did not determine the rate or method of payment to Liebesman;
- d. There is no dispute that CGI, did not maintain any “work records” regarding Plaintiff; and,
- e. There is no dispute that Plaintiff did not use CGI’s premises or equipment to perform any services for CGI.

7. In addition or in the alternative, CGI is entitled to judgment as a matter of law on Plaintiff’s claim under the MMWL because the undisputed facts demonstrate that Liebesman volunteered her services at CGI’s St. Louis Rock ‘n’ Roll Marathon events as a member of her bicycle club (Big Shark Racing, Inc., a Missouri nonprofit corporation), and as part of that club’s regular activities; meaning that CGI was not her employer.

8. Because Ms. Liebesman was an individual who rendered services to Big Shark Racing, Inc. on a voluntary basis, Plaintiff is excluded from coverage under the MMWL.

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<sup>1</sup> Liebesman’s Petition previously contained a claim of quantum meruit against CGI. This Court sustained Defendant’s Motion for Judgment on the Pleadings as to Liebeman’s quantum meruit claim.

9. In addition or in the alternative, CGI is entitled to judgment as a matter of law because, even assuming that Liebesman could be considered an “employee of CGI,” she nevertheless exempt from coverage under the MMWL because her services were performed on a casual and intermittent basis, inasmuch as she performed these services one day in 2011 and one day in 2012.

10. CGI is entitled to judgment as a matter of law on Plaintiff’s unjust enrichment claim because there is no dispute that Liebesman received everything that she expected to receive in exchange for cycling at the St. Louis Rock ‘n’ Roll events in 2011 and 2012.

11. Attached to this motion is a Statement of Uncontroverted Material Facts in compliance with Rule 74.04(c)(1).

Wherefore, based on the foregoing, CGI respectfully requests this Court enter judgment in favor of CGI on Plaintiff’s entire petition and all claims therein, to award CGI its costs and attorneys’ fees, and for such further relief as the Court deems just and proper.

Respectfully submitted,

MCMAHON BERGER, P.C.

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**Certificate of Service**

I hereby certify that on this 2<sup>nd</sup> day of August, 2017 a true copy of the foregoing Motion for Summary Judgment was sent via first class mail and served by electronic mail on:

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Along with the foregoing Motion, an electronic copy of the statement of uncontroverted material facts was sent by electronic mail in Microsoft Word to the parties above.

/s/ Thomas O. McCarthy