

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MALORI WAMPLER

Plaintiff,

v.

INDIANAPOLIS COLTS

Defendant.

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Civil Action No. 1:11-CV-00606-TWP-TAB

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, Malori Wampler (Wampler), by counsel, for her First Amended Complaint and Jury Trial Demand against the Defendant, Indianapolis Colts (the Colts), states as follows:

JURISDICTION AND VENUE

1. This action arises out of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et. seq. (Title VII) and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (Section 1981).
2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.
3. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of Indiana, Indianapolis Division.

PARTIES

4. Wampler is a citizen of the United States of America and the state of Indiana, and resides in Marion County, Indiana.

5. At all relevant times Wampler was an “employee” within the meaning of Title VII and Section 1981.
6. The Colts organization is a for-profit foreign corporation authorized and doing business in Indiana.
7. At all relevant times, the Colts was an “employer” within the meaning of Title VII and Section 1981.
8. According to information maintained by the Indiana Secretary of State, the Registered Agent for the Colts is Daniel Emerson, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

ADMINISTRATIVE PROCEDURES

9. On November 23, 2010, Wampler timely filed a charge of discrimination against the Colts with the Indianapolis District Office of the Equal Employment Opportunity Commission (EEOC). A copy of charge number 470-2010-00630 is attached as Exhibit 1.
10. On February 3, 2011, the EEOC mailed a Dismissal and Notice of Rights to Wampler. A copy of the Dismissal and Notice of Rights is attached as Exhibit 2.
11. This civil action is being initiated within 90 days of Wampler’s receipt of the EEOC Dismissal and Notice of Rights.

GENERAL FACTUAL ALLEGATIONS

12. Wampler is female.
13. Wampler’s race is Asian and her national origin is Indonesian.
14. On or around May 6, 2010, the Colts hired Wampler as a cheerleader for the 2010 – 2011 season.

15. Prior to being hired, Wampler informed the Colts that she had been affiliated with the Playboy organization.
16. Wampler told the Colts that she did not pose nude for Playboy, but had attended a Playboy Mansion party and helped host golf outings.
17. Theresa Pottratz (Pottratz), the Cheerleading Coordinator, told Wampler that she had to discuss Wampler's prior Playboy affiliation with Tom Zupancic (Zupancic), the Senior Vice President of Sales and Marketing, and Chuck O'Hara (O'Hara), the Senior Director of Marketing.
18. Pottratz told Wampler that she met with Zupancic and O'Hara regarding her prior Playboy affiliation and that it was not an issue.
19. Prior to being hired by the Colts and at the request of Pottratz, Wampler contacted Playboy and asked the organization to remove a photograph from its website that Pottratz found of Wampler. The photograph was removed.
20. Wampler then searched the Playboy website and could not find any other photographs. Throughout the remainder of her employment with the Colts, Wampler was not aware of any other photographs taken of her as a result of her prior Playboy affiliation and stored on the Playboy website.
21. After Wampler removed the photograph from the Playboy website and Pottratz got approval from Zupancic and O'Hara, on or around May 6, 2010, the Colts hired Wampler as a cheerleader.
22. On May 6, 2010, Wampler and the Colts entered into an *Indianapolis Colts Cheerleader Agreement* (Cheerleader Agreement), which set forth the terms and conditions of Wampler's employment with the Colts. .

23. Paragraph 9 of the Cheerleader Agreement contains the following “morals” or conduct clause:

Cheerleader agrees not to commit any act that will or may create notoriety (including posing nude or semi-nude in or for any media or publication whatsoever), bring Cheerleader into public disrepute, or reflect adversely on [the] Club or its sponsors. Cheerleader understands that she will serve as a public representative of the Club from time to time and that it is important to this employment relationship that she be viewed in a positive manner. Cheerleader agrees to behave in accordance with social acceptable mores and conventions.

24. Upon being hired by the Colts and signing the Cheerleader Agreement, Wampler had no further affiliation with Playboy.
25. All Colts cheerleaders sign a Cheerleader Agreement with similar “morals” or conduct clause.
26. The Colts football players also sign agreements with similar “morals” or conduct clauses.
27. On November 15, 2010, Pottratz called Wampler to a meeting at the Colts Complex. Pottratz did not tell Wampler the reason for the meeting.
28. When Wampler arrived to the meeting, Pottratz and O’Hara were waiting for her in a conference room.
29. Wampler, Pottratz and O’Hara waited in the conference room until Zupancic rushed in, sat down, and told Wampler that a fan mailed in “painted pictures” of her and the Colts did not want to be “affiliated with the situation.” Zupancic then terminated Wampler, stood up, and left the conference room.
30. No one at the meeting showed Wampler the photographs.
31. During the meeting, Wampler’s performance as a Colts cheerleader was praised.
32. Wampler did not see the photographs until the EEOC investigation.

33. The photographs of Wampler were taken prior to her being hired by the Colts. Wampler's name was not associated in any way with the photographs, the photographs were not contained in any publication, and Wampler was not paid by Playboy for the photographs.
34. Similarly situated male Colts football players have acted in ways that created notoriety, brought the male football players into public disrepute, or reflected on the Colts or its sponsors and have not been disciplined or terminated for their conduct.
35. For instance, in or around October 2010, Pat McAfee was arrested for public intoxication after swimming in an Indianapolis city canal.
36. In or around January 2010, Taj Smith was arrested on suspicion of drunken driving.
37. In or around August 2010, John Gill was arrested for public intoxication after police found him passed out in a ditch.
38. In or around September 2010, Fili Moala was arrested for speeding, public intoxication and driving while intoxicated.
39. In or around April 2010, a civil lawsuit was filed against Eric Foster by a hotel clerk who accused Foster of sexual battery, bodily injury, confining the clerk against her will and intentional infliction of emotional distress.
40. In or around February 2009, Darrell Reid was arrested for disorderly conduct and trespass and in 2007 Reid was arrested on suspicion of marijuana possession in New Jersey.
41. In or around April 2008, Kenton Keith was arrested for public intoxication, disorderly conduct, resisting law enforcement and contributing to the delinquency of a minor.

42. In or around February 2007, Dominic Rhodes was arrested on suspicion of drunken driving and in 2002 Rhodes was charged with domestic battery.
43. Similarly situated Caucasian Colts Cheerleaders have acted in ways that created notoriety, brought the Caucasian Colts Cheerleaders into public disrepute, or reflected on the Colts or its sponsors and have not been disciplined or terminated for their conduct.
44. For instance, shortly following Wampler's termination in November 2010, "Breanna F," a Caucasian Colts Cheerleader, posed semi-nude for a photographer and the photographs were posted on the photographer's website. When the photographs were brought to Colts attention, specifically to Zupancic's attention, "Breanna F" was not terminated or disciplined in any way. In fact, the Colts hired "Breanna F" as a cheerleader for the 2011-2012 season.
45. The Colts terminated Wampler because of her sex in violation of Title VII and because of her race and national origin in violation of Section 1981.
46. As a result of the Colts unlawful employment practices, Wampler has incurred lost wages.
47. As a result of the Colts unlawful employment practices, Wampler has suffered and continues to suffer emotional distress and mental anguish.
48. The Colts unlawful employment practices were intentional.
49. The Colts unlawful employment practices were done with malice or reckless indifference to Wampler's federally protected rights.
50. Wampler is entitled to recover reasonable attorneys' fees and costs.

COUNT I
(Title VII—Sex Discrimination)

51. All preceding paragraphs are incorporated herein by reference.
52. By acts described above, the Colts terminated Wampler because of her sex in violation of Title VII.
53. Wampler is a member of a protected class.
54. Wampler met the Colts legitimate performance expectations.
55. Wampler was treated differently than other similarly situated male employees.
56. As a result of the Colts discriminatory acts, Wampler has suffered and will continue to suffer monetary damages and damages for mental anguish and humiliation unless and until the Court grants relief.
57. The Colts acted with malice or reckless indifference to Wampler's civil rights thereby entitling her to punitive damages.
58. Wampler is entitled to recover reasonable attorneys' fees and costs incurred in this action.

COUNT II
(Section 1981—Race and National Origin Discrimination)

59. All preceding paragraphs are incorporated herein by reference.
60. By the acts described above, the Colts terminated Wampler because of her race and national origin in violation of Section 1981.
61. Wampler is a member of a protected class.
62. Wampler met the Colts legitimate performance expectations.
63. Wampler was treated differently than other similarly situated female employees.

64. As a result of the Colts discriminatory acts, Wampler has suffered and will continue to suffer monetary damages and damages for mental anguish and humiliation unless and until the Court grants relief.
65. The Colts acted with malice or reckless indifference to Wampler's civil rights thereby entitling her to punitive damages.
66. Wampler is entitled to recover reasonable attorneys' fees and costs incurred in this action.

WHEREFORE, Plaintiff, Malori Wampler, respectfully requests that this Court enter an Order:

- A. Requiring the Colts to reinstate Wampler;
- B. Awarding all lost wages Wampler has sustained or will sustain as a result of the Colts conduct;
- C. Awarding front pay in an amount equal to the wages that Wampler may reasonably be expected to lose after trial as a result of the Colt's unlawful conduct should the Court determine that an order requiring the Colts to reinstate Wampler as a Colts Cheerleader is not feasible or appropriate;
- D. Awarding prejudgment interest;
- E. Awarding compensatory damages in an amount to be determined by a jury to make Wampler whole for the mental anguish, emotional distress and other non-pecuniary damages she has suffered because of the Colt's unlawful conduct;
- F. Awarding punitive damages in an amount to be determined by a jury to punish the Colts for its unlawful conduct which was malicious or undertaken with reckless indifference to Wampler's rights and to deter others from similar conduct;

- G. Awarding the costs of maintaining this action, including an award of reasonable attorneys' fees; and
- H. Awarding all other relief proper in the premises.

Respectfully Submitted,

JESELSKIS LAW OFFICES, LLC

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TRIAL BY JURY

Plaintiff, Malori Wampler, demands a trial by jury on all issues to triable.

Respectfully Submitted,

JESELSKIS LAW OFFICES, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on **May 9, 2011** the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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