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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

URSULA GRUENERT, on behalf of
herself, all other similarly situated and
typical individuals, and the general public,

Plaintiff,

vs.

MARIN COUNTY OFFICE OF
EDUCATION; TAMALPAIS UNION
HIGH SCHOOL DISTRICT; and DOES 1
through 50, inclusive,

Defendant(s).

Case No. CIV-2103521

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT, CCP §382**

- 1) Failure to Pay Minimum Wages in
Violation of the California Labor Code;
- 2) Failure to Pay Overtime Wages in
Violation of the California Labor Code;
- 3) Private Attorney Generals Act Violations;
and
- 4) Unfair Business Practices.

JURY TRIAL DEMANDED

Plaintiff URSULA GRUENERT, on behalf of herself and all other similarly situated and
typical persons, alleges the following:

All allegations in this Complaint are based upon information and belief except for those
allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this

FILED

FEB -9 2022

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

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Plaintiff URSULA GRUENERT, on behalf of herself and all other similarly situated and
typical persons, alleges the following:

All allegations in this Complaint are based upon information and belief except for those
allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this

Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

1. The Superior Court of the State of California, for the County of Marin, has original jurisdiction over the state law claims alleged herein pursuant to the California Constitution.

2. Venue is proper in this Court because Defendants operate in this judicial district.

PARTIES

3. Plaintiff URSULA GRUENERT is natural person who has been employed by Defendants in a coaching position during the relevant time period.

4. Defendant MARIN COUNTY OFFICE OF EDUCATION (“Defendant” or “MCOE”) is a governmental entity with a principal place of operation located at 1111 Las Gallinas Avenue, San Rafael, CA 94903.

5. Defendant TAMALPAIS UNION HIGH SCHOOL DISTRICT (“Defendant” or “TUHSD”) is a governmental entity with a principal place of operation located at 395 Doherty Drive, Larkspur, CA 94939.

6. Collectively MCOE and TUHSD are referred to throughout this Complaint at “Defendants”.

7. The identity of DOES 1-50 is unknown at this time, and this Complaint will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes that each of the Defendants sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” herein shall mean “Defendants and each of them.”

FACTUAL ALLEGATIONS

8. Plaintiff has been employed by Defendants as a girls varsity volleyball coach from on or about 2018 until the present.

9. As of the date that she was first hired up to or about November 20, 2021, Defendants have compensated Plaintiff in the base amount of \$2,400 per regular season and an

additional sum if her team was enough to extend their regular-season into post-season competition.

10. A typical girls varsity volleyball regular-season lasts approximately three and one-half (3 ½) months, or 14 weeks.

11. Apart from her obvious duties as a head varsity coach (coaching at practice and during games), Plaintiff was responsible for all the administrative tasks of running a varsity level team (e.g., communicating with student-athletes, scheduling, etc.).

12. Plaintiff estimates that she worked approximately the following hours for the following years, thereby rendering the following effective hourly rate of pay (which is less than the applicable California minimum wage)¹:

<u>Year</u>	<u>Hours Worked</u>	<u>Total Compensation</u>	<u>Effective Hourly Rate</u>
2018	432	\$2,829.18	\$6.54
2019	352	\$3,173.36	\$9.02
2020	84	\$0.00	\$0.00
2021	516	\$4,805.47	\$9.31

13. Defendants' policy and practice of compensating coaches on a per season basis was not unique to Plaintiff; Defendants paid all coaches on a regular basis without regard to the actual hours that they devoted to coaching and all related duties.

¹ The California minimum hourly wage rate during the relevant time period alleged herein is as follows:

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	

14. Upon information and belief, other coaches employed by Defendants did not earn at least the California state mandated minimum wage rate for all the hours they worked.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

15. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

16. Plaintiff brings this action on behalf of herself and all other similarly situated and typical employees as a class action under California Code of Civil Procedure Section 382.

The California Class

17. Plaintiff brings this action on behalf of herself and all members of the Coach Class as defined below.

18. The **Coach Class** (hereinafter referred to as “Coach Class Members”) is defined as follows:

All coaches employed by one or more of the Defendants who were paid on a per season basis at any time during the relevant time period alleged herein.

19. Class treatment is appropriate in this case for the following reasons:

A. The Class Is Sufficiently Numerous: Upon information and belief, Defendants employ and have employed approximately 50 members of the Coach Class within the applicable statute of limitations. Because Defendants are legally obligated to keep accurate payroll records, Plaintiff alleges that Defendants’ records will establish the members of the Class as well as its numerosity.

B. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiff and members of the Class, including, without limitation, whether Defendant failed to compensate Plaintiff and members of the Class their minimum wages for all the hours that they worked; and

C. Plaintiff’s Claims are Typical to Those of Fellow Members of the Class: Plaintiff’s claims are typical to those of the Class she seeks to represent. Plaintiff and

1 members of the Coach Class were paid on a per-season basis without any regard to their
2 actual hours worked.

3 D. Plaintiff Is An Adequate Representative of the Class: Plaintiff will fairly
4 and adequately represent the interests of members of the Class because Plaintiff is a
5 member of the proposed Class, she has common issues of law and fact with all members
6 of the Class, and her claims are typical to other members of the Class.

7 E. A Class Action is Superior/Common Claims Predominate: A class action
8 is superior to other available means for the fair and efficient adjudication of this
9 controversy since individual joinder of all members of the Class is impractical. Class
10 action treatment will permit a large number of similarly situated persons to prosecute their
11 common claims in a single forum simultaneously, efficiently, and without unnecessary
12 duplication of effort and expense. Furthermore, the expenses and burden of
13 individualized litigation would make it difficult or impossible for individual members of
14 the Class to redress the wrongs done to them, while an important public interest will be
15 served by addressing the matter as a class action. Individualized litigation would also
16 present the potential for inconsistent or contradictory judgments.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages for All Hours Worked Under California Law**

19 (On Behalf of Plaintiff and members of the Coach Class Against Defendants)

20 20. Plaintiff realleges and incorporates by this reference all the paragraphs above in
21 this Complaint as though fully set forth herein.

22 21. California Labor Code (hereinafter referred to as "Labor Code") § 1194 provides
23 that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
24 the legal minimum wage compensation applicable to the employee is entitled to recover in a civil
25 action the unpaid balance of the full amount of this minimum wage, including interest thereon,
26 reasonable attorney's fees, and costs of suit."

27 22. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the
28 minimum wage and states that "the payment of a less wage than the minimum so fixed is

unlawful.” Section 4 of applicable Wage Order No. 4 requires Defendant to pay its employees minimum wages for all hours worked.

23. As set forth above, Defendant’s per season compensation plan did not compensate Plaintiff and all members of the Coach Class at least the minimum wage rate for each hour that they worked.

24. Labor Code § 1194.2(a) provides that, in an action to recover wages because of the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

25. Plaintiff and all members of the Coach Class should have received the minimum wage, in a sum according to proof for the hours worked, but not compensated, during the Class Period. Defendants, therefore, owe Plaintiff and all members of the Coach Class their minimum wages, as well as liquidated damages in an equal amount to the wages owed, and has failed and refused, and continues to fail and refuse, to pay Plaintiff and members of the Class the amounts owed.

26. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Plaintiff and members of the Class have sustained damages and been deprived of minimum wages that are owed in amounts to be proven at trial, and are entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys’ fees and costs pursuant to Labor Code §§ 218.5, 1194, and 1194.2, for the three years prior to the filing of this Complaint to the date of judgment after trial.

27. Because Defendants’ conduct described immediately above is an act of unfair competition and a business practice in violation of California Business & Professions Code § 17200, Plaintiff and members of the Class are entitled to recover the amounts previously specified for four years prior to the filing of this Complaint to the date of judgment after trial.

28. Defendants are also subject to civil penalties and restitution of wages payable to Plaintiff and all members of the Class pursuant to Labor Code § 1197.1 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

29. Defendants are also subject to civil penalties and restitution of wages payable to Plaintiff and all members of the Class pursuant to Labor Code § 558 for violating the applicable Wage Order as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

30. These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

SECOND CAUSE OF ACTION

Violating California Private Attorney General Act

(On Behalf of Plaintiff and All Other Aggrieved Employees Against Defendants)

1 31. Plaintiff realleges and incorporates by this reference all the paragraphs above in
2 this Complaint as though fully set forth herein.

3 32. Labor Code § 2699(a) states:

4 Notwithstanding any other provision of law, any provision of this
5 code that provides for a civil penalty to be assessed and collected by
6 the Labor and Workforce Development Agency or any of its
7 departments, divisions, commissions, boards, agencies, or
8 employees, for a violation of this code, may, as an alternative, be
9 recovered through a civil action brought by an aggrieved employee
10 on behalf of himself or herself and other current or former
11 employees pursuant to the procedures specified in Section 2699.3.

12 33. Plaintiff and all members of the California Coach Class who were employed by
13 Defendant at any time within one (1) year of the filing of the PAGA letter are “aggrieved
14 employees” as that term is defined in the California Labor Code Private Attorney General Act of
15 2004, because they are current or former employees of the alleged violator and against whom
16 one or more of the alleged violations was committed.

17 34. Plaintiff filed the requisite letter to California’s Labor Workforce Development
18 Agency (“LWDA”) on September 2, 2021, pursuant to California Labor Code § 2699, *et seq.* A
19 true and correct copy of the PAGA letter and enclosed draft complaint is attached hereto as
20 Exhibit 1. Plaintiff has not received a response from LWDA.

21 35. Plaintiff brings this action on behalf of herself and all aggrieved employees who
22 were subject to Defendants’ failure to pay Plaintiff and aggrieved employees their required
23 minimum wages for all hours they worked.

24 36. Plaintiff, on behalf of herself and in a representative capacity on behalf of all
25 aggrieved employees, demand the maximum civil penalty specified in Labor Code § 2699 in the
26 amount of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per period for
27 the initial violation and two hundred dollars (\$200) per pay period for each subsequent violation
28 for violations of Labor Code 226, 1194, and 1197.

 37. These penalties are recoverable in addition to any other civil penalty separately
recoverable by law.

THIRD CAUSE OF ACTION

Unfair Business Practices Under California Law

(On Behalf of Plaintiff and the Coach Class Against Defendant)

38. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

39. By the conduct described throughout this Complaint, Defendant has violated the provisions of the California Labor Code as specified and has engaged in unlawful, deceptive, and unfair business practices prohibited by California Business & Professions Code § 17200, *et seq.* Defendant's use of such practices resulted in greatly decreased labor costs and constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendant's competitors.

40. The unlawful and unfair business practices complained of herein are ongoing and present a threat and likelihood of continuing against Defendant's current employees as well as other members of the general public. Plaintiff and all members of the Class are therefore entitled to injunctive and other equitable relief against such unlawful practices in order to prevent future damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and all members of the Class request a preliminary and permanent injunction prohibiting Defendant from the unfair practices complained of herein.

41. Defendant generated income as a direct result of the above-mentioned unlawful and unfair business practices. Plaintiff and all members of the Class are therefore entitled to restitution of any and all monies withheld, acquired, and/or converted by Defendant by means of the unfair and unlawful practices complained of herein.

42. As a result, Plaintiff and all members of the Class seek restitution of their unpaid wages, unpaid overtime, meal and rest break pay, and waiting time penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to proof. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendant.

JURY DEMAND

Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Wherefore Plaintiff, individually and on behalf of all other similarly situated and aggrieved employees, pray for relief as follows relating to her class and representative action allegations:

1. For an order certifying this action as a class action on behalf of the proposed Coach Class;
2. For an order appointing Plaintiff as the Representative of the Coach Class and for an order appointing her counsel as Class Counsel;
3. For damages according to proof for minimum rate pay for all hours worked under state law;
4. For liquidated damages;
5. For civil penalties;
6. For PAGA penalties;
7. For interest as provided by law at the maximum legal rate;
8. For reasonable attorneys' fees authorized by statute;
9. For costs of suit incurred herein;
10. For pre-judgment and post-judgment interest, as provided by law, and
11. For such other and further relief as the Court may deem just and proper.

DATED: February 9, 2022

THIERMAN BUCK LLP

s/ Joshua D. Buck

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

Attorneys for Plaintiff

PROOF OF SERVICE

CASE NAME: *Ursula Gruemert et al. v. Marin County Office of Education et al.*
COURT: Superior Court of the State of California in and for the County of Marin
CASE NO.: CIV-2103521

I, Jennifer Edison-Strekal, am over the age of eighteen and not a party to the within action; my business address is 7287 Lakeside Drive, Reno, Nevada 89511. On the date last written below, I served the following document(s):

**FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT,
CCP §382**

on the parties stated below, through their attorneys of record, be facsimile transmission, by personal delivery, or by placing true copies thereof in a sealed envelope addressed as shown below for service, as designated below:

[]: **First Class Mail** – I caused each such envelopes, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Reno, Nevada for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

[XX]: **By Email Service** – I cause a true copy thereof to be transmitted on the date shown below to the email addresses published for the addressee.

[]: **By Personal Service:** -- I caused each document identified herein to be delivered to a courier employed by a courier service with whom we have a direct billing account, who personally delivered the document identified herein to the addressee on the date below.

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I declare under penalty of perjury in the laws of the State of Nevada that the foregoing is true and correct. Executed on February 9, 2022, at Reno, Nevada.

/s/ Jennifer Edison-Strekal
Jennifer Edison-Strekal