

FILED

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: W. Simmons, Deputy

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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. **2103521**

**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) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 4) Private Attorney Generals Act Violations; and
- 5) 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 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.

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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 the filing of this Complaint, 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 per regular basis without regard to the actual hours that they devoted to coaching and all related duties.

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 that 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 Classes

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	

1 17. Plaintiff brings this action on behalf of herself and all members of the Coach Class
2 (as defined below) and all Subclasses contained therein.

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

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

8 A. The **Coach Class** may be further subdivided into the following subclasses
9 of similarly-situated and typical individuals based upon the divergent statute of
10 limitations period for various claims asserted herein (collectively “the Coach Subclasses”
11 or “Coach Subclass Members”):

12 **Itemized Wage Statement Coach Subclass:** All Coach
13 Class Members who were employed at any time during the
14 relevant time period alleged herein.

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

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

21 B. Common Questions of Law and Fact Exist: Common questions of law and
22 fact exist and predominate as to Plaintiff and members of the Class, including, without
23 limitation:

- 24 1) Whether Defendant failed to compensate Plaintiff and members of the
25 Class their minimum wages for all the hours that they worked; and
26 2) Whether Defendant’s policy of not compensating Plaintiffs and members
27 of the Itemized Wage Statement Coach Subclass their minimum wages in
28 a pay period on the pay stub violates the itemized wage statement

provisions of the California Labor Code and the Orders of the California Industrial Wage Commission.

C. Plaintiff's Claims are Typical to Those of Fellow Members of the Class:

Plaintiff's claims are typical to those of the Classes she seeks to represent. Plaintiff and members of the Coach Class were paid on a per-season basis without any regard to their actual hours worked.

D. Plaintiff Is An Adequate Representative of the Class: Plaintiff will fairly

and adequately represent the interests of members of the Class because Plaintiff is a member of the proposed Class, she has common issues of law and fact with all members of the Class, and her claims are typical to other members of the Class.

E. A Class Action is Superior/Common Claims Predominate: A class action

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

FIRST CAUSE OF ACTION

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

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

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

21. California Labor Code (hereinafter referred to as "Labor Code") § 1194 provides that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled

to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

22. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the 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 Classes 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.

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

4 **SECOND CAUSE OF ACTION**

5 **Failure to Provide Accurate Wage Statements Under California Law**

6 (On Behalf of Plaintiff and members of the Wage Statement Coach Subclass Against
7 Defendants)

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

10 31. Defendants knowingly and intentionally failed to provide timely, accurate,
11 itemized wage statements showing, inter alia, hours worked to Plaintiff and members of the Wage
12 Statement Subclasses in accordance with Labor Code § 226(a) and applicable Wage Order No.
13 9. Such failure caused injury to Plaintiff and members of the Wage Statement Coach Subclass
14 by, among other things, impeding them from knowing the amount of wages to which they are
15 and were legally entitled.

16 32. Plaintiff's good faith estimate of the number of pay periods in which Defendants
17 failed to provide accurate itemized wage statements to Plaintiff and members of the Wage
18 Statement Coach Subclass is each and every pay period during the Class Period.

19 33. Plaintiff and members of the Wage Statement Coach Subclass are entitled to and
20 seek injunctive relief requiring Defendants to comply with Labor Code §§ 226(a) and further
21 seek the amount provided under Labor Code § 226(e), including the greater of all actual damages
22 or fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred
23 dollars (\$100) per employee for each violation in a subsequent pay period.

24 34. Defendants are also subject to civil penalties for Labor Code §§ 226(a) violations
25 "in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial
26 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . ."
27 as provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty
28

1 provided by law and are recoverable by private individuals on behalf of the state of California
2 under the Private Attorney General Act, Labor Code § 2699, *et seq.*

3 35. Because Defendants' conduct described immediately above is an act of unfair
4 competition and a business practice in violation of California Business & Professions Code
5 Section 17200, Plaintiff further demands the Defendants be enjoined from continuing to provide
6 inaccurate pay statements that fail to include the amount of hours worked by each employee, the
7 hourly rate of pay, and the amount of all overtime hours worked at the corresponding hourly rate.

8 **THIRD CAUSE OF ACTION**

9 **Violating California Private Attorney General Act**

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

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

13 37. Labor Code § 2699(a) states:

14 Notwithstanding any other provision of law, any provision of this
15 code that provides for a civil penalty to be assessed and collected by
16 the Labor and Workforce Development Agency or any of its
17 departments, divisions, commissions, boards, agencies, or
18 employees, for a violation of this code, may, as an alternative, be
19 recovered through a civil action brought by an aggrieved employee
20 on behalf of himself or herself and other current or former
21 employees pursuant to the procedures specified in Section 2699.3.

22 38. Plaintiff and all members of the members of the California Coach Class who were
23 employed by Defendant at any time within one (1) year of the filing of the PAGA letter are
24 "aggrieved employees" as that term is defined in the California Labor Code Private Attorney
25 General Act of 2004, because they are current or former employees of the alleged violator and
26 against whom one or more of the alleged violations was committed.

27 39. Plaintiff filed the requisite letter to California's Labor Workforce Development
28 Agency ("LWDA") on September 2, 2021, pursuant to California Labor Code § 2699, *et seq.* A
true and correct copy of the PAGA letter and enclosed draft complaint is attached hereto as
Exhibit 1.

40. Plaintiff brings this action on behalf of herself and all aggrieved employees who were subject to Defendants' failure to pay Plaintiff and aggrieved employees their required minimum wages for all hours they worked and their failure to provide accurate wage statements.

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

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

FOURTH CAUSE OF ACTION

Unfair Business Practices Under California Law

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

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

44. By the conduct described throughout this Complaint, Defendant has violated the provisions of the California Labor Code as specified and have 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.

45. 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 Classes 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 Classes request a preliminary and permanent injunction prohibiting Defendant from the unfair practices complained of herein.

46. Defendant generated income as a direct result of the above-mentioned unlawful and unfair business practices. Plaintiff and all members of the Classes 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.

47. As a result, Plaintiff and all members of the Classes seek restitution of their unpaid wages, unpaid overtime, meal and rest break pay, itemized wage statement penalties, 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 and Subclass;
2. For an order appointing Plaintiff as the Representative of the Coach Class and Subclass 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

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11. For such other and further relief as the Court may deem just and proper.

DATED: September 22, 2021

THIERMAN BUCK LLP

s/ Joshua D. Buck
Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua R. Hendrickson

Attorneys for Plaintiff