

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
GOLDEN WEST SWIM CLUB; GOLDEN WEST SWIM CLUB
SUPPORT GROUP; MARK SCHUBERT; and DOE 1 through
DOE 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
DIA C. RIANDA

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 17 2012

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA
700 Civic Center Drive
Santa Ana, CA 92701

CASE NUMBER (Número de Caso): **00598426**

JUDGE RONALD L. BAUER

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
B. ROBERT ALLARD
96 North Third Street, Suite 620
San Jose, California 95112

CORSIGLIA, McMAHON & ALLARD
(408) 289-1417

DATE: **SEP 17 2012** **ALAN CARLSON**

Clerk, by **A. NGUYENDC**, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 **B. ROBERT ALLARD (#175592)**
2 **ALYSON M. GLEASON (#267081)**
3 **CORSIGLIA MCMAHON & ALLARD LLP**
4 96 NORTH THIRD STREET, SUITE 620
5 SAN JOSE, CALIFORNIA 95112
6 TELEPHONE: (408) 289-1417
7 FACSIMILE: (408) 289-8127

8 ATTORNEYS FOR PLAINTIFF
9 DIA C. RIANDA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
SEP 17 2012

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF ORANGE**

13 DIA C. RIANDA,

14 Plaintiff,

15 vs.

16 GOLDEN WEST SWIM CLUB; GOLDEN
17 WEST SWIM CLUB SUPPORT GROUP;
18 MARK SCHUBERT; and DOE 1 through
19 DOE 50, inclusive,

20 Defendants.

Case No.

30-2012
00598426

COMPLAINT FOR DAMAGES

- 1) Wrongful Termination in Violation of Public Policy
- 2) Breach of Contract
- 3) Retaliation

[Amount in excess of \$25,000]

JUDGE RONALD L. BAUER

21 Plaintiff, DIA C. RIANDA, alleges:

22
23 **GENERAL ALLEGATIONS**

24 1. Plaintiff DIA C. RIANDA (plaintiff) is, and at all times relevant was, an adult
25 female residing mainly in Orange County, California.

26 2. Plaintiff is informed and believes and on that basis alleges that defendant Golden
27 West Swim Club (GWSC) is, and at all relevant times was, a non-profit public benefit
28

1 corporation organized and existing under the laws of the State of California, with its principal
2 place of business in Orange County, California. At those times relevant herein, GWSC was
3 plaintiff's employer.

4 3. Plaintiff is informed and believes and on that basis alleges that defendant Golden
5 West Swim Club Support Group is, and at all relevant times was, a non-profit corporation
6 organized and existing under the laws of the State of California, with its principal place of
7 business in Orange County, California. At all times relevant, defendant Golden West Swim
8 Club Support Group owned and/or controlled defendant GWSC.

9 4. Plaintiff is informed and believes and on that basis alleges that defendant Mark
10 Schubert (Schubert) is, and at all relevant times was, an individual residing in Orange County,
11 California. At those times relevant herein Schubert was the Head Coach and Chief Executive
12 Officer (CEO) of defendant GWSC. He was also plaintiff's immediate supervisor.

13 5. The true names and capacities of defendants named as Doe 1 through Doe 50,
14 inclusive, are presently unknown to plaintiff. Plaintiff will amend this complaint, setting forth
15 the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff
16 is informed and believes and on that basis alleges that each of the fictitious defendants has
17 participated in the acts alleged in this complaint to have been done by the named defendants.

18 6. Plaintiff is informed and believes and on that basis alleges that, at all relevant
19 times, each of defendants, whether named or fictitious, was the agent or employee of each of the
20 other defendants, and in doing the things alleged to have been done in the complaint, acted
21 within the scope of such agency or employment, or ratified the acts of the other.

22 7. The incidents that are the subject of this complaint, including plaintiff's hiring
23 and firing, took place in the County of Orange, State of California.

24 **ALLEGATIONS COMMON TO ALL CLAIMS**

25 8. This complaint tells a story that has become all-too-familiar in the USA
26 Swimming world: a legend in the coaching fraternity decides to go to great lengths to protect a
27 fellow coach in the face of clear, unequivocal concerns that the coach is behaving in a sexually
28 improper manner with young athletes placed under his control. Rather than deal with the

1 uncomfortable problem of having to discipline a long-standing assistant, the legendary coach
2 decides to deal with the problem by simply getting rid of the pesky complainant. The moral is
3 that if such events remain unchallenged, the truth-teller will inevitably become a thing of the
4 past, with the end result being a group of innocent children left to suffer the consequences.

5 **THE GOLDEN WEST SWIM CLUB (GWSC):**

6 9. The GWSC is/was a nonprofit, public benefit corporation organized under the
7 laws of the state of California on or about January 1, 1983. GWSC was formed through the
8 merger of two existing swim clubs: Fountain Valley Swim Team and Huntington Beach Swim
9 Club.

10 10. The GWSC first operated under the Golden West College Community Services
11 Division as a member of the Sports Academy. However, since 1988, GWSC has functioned as
12 an independent nonprofit organization serving the greater Huntington Beach community.

13 11. The Golden West Swim Club Support Group was incorporated under the laws of
14 the State of California on or about August 6, 1984. Plaintiff is informed and believes that
15 Golden West Swim Club Support Group owns, operates and/or controls the GWSC, and is
16 responsible for appointing and supervising GWSC's Head Coach and its officers and directors.
17 Plaintiff is informed and believes and on that basis alleges that the Board of Directors of GWSC
18 consists of members of the Golden West Swim Club Support Group.

19 12. The GWSC purports to offer a competitive swimming program for all ages and
20 abilities. All coaches and managers employed by (or volunteering to) GWSC are members of
21 USA Swimming; the National Governing Body for the sport of swimming in the United States.
22 All coaches, managers and volunteers working at GWSC are subject to the rules, regulations
23 and policies of USA Swimming, including, but not limited to, the USA Swimming Code of
24 Conduct and its Athlete Protection Policies. At all times relevant herein, these rules include,
25 *inter alia*, a mandatory sexual harassment, abuse and/or molestation reporting requirement.

26 13. The GWSC Team Code of Conduct provides that GWSC, "Team members and
27 staff will refrain from any illegal or inappropriate behavior that would detract from a positive
28 image of the team or would be detrimental to its performance objectives."

1 (“FAST”) Elite Training Center funded by USA Swimming, from his position at USA
2 Swimming. Later the name was changed to the USOC Post Graduate Olympic Training Center
3 and funded through with USOC monies through USA Swimming. While working with FAST, at
4 least two events occurred that foreshadowed Schubert’s subsequent refusal to properly address
5 plaintiff’s legitimate complaints of improper coach/athlete interactions:

6 a) The first problem developed when Schubert recruited Coach Sean Hutchison, a
7 rising “star” in the swimming community. Hutchison was Schubert’s assistant at the
8 Beijing Olympics in 2008 and was the head U.S. women's coach at the 2009
9 swimming world championships in Rome. Shortly after Hutchison’s arrival at
10 FAST, Schubert discovered that Hutchison was engaged in an inappropriate sexual
11 relationship with at least one of the athletes he was coaching. Accordingly, after a
12 power struggle had occurred between the coaches at FAST, Schubert hired a private
13 investigator to conduct surveillance on Coach Hutchison. Ultimately, Schubert was
14 able to secure incriminating photographs and/or video which depicted Coach
15 Hutchison acting intimately with at least one of his swimmers. As opposed to
16 turning this information over to the authorities or otherwise taking some sort of
17 action to ensure that this inappropriate behavior ended, Schubert, at least for the
18 time being, retained this incriminating evidence for what he referred to as
19 “insurance” to be used for his personal gain in the future.

20 b) The second problematic development at FAST involved Coach William Jewell. Due
21 to Schubert’s then existing relationship with USA Swimming, he was unable to
22 retain a formal position at FAST. As a consequence, Schubert worked behind the
23 scenes to secure FAST Board approval to have his long-time friend William Jewell
24 appointed as FAST’S CEO. Soon thereafter, parents and coaches began
25 complaining that Coach Jewell was having improper physical contacts with some of
26 FAST’s young female swimmers. In particular, Coach Jewell was observed
27 improperly touching the girls and providing them with “massages” in clear violation
28 of USA Swimming’s Code of Conduct. Additionally, Coach Jewell was overheard

1 making a series of inappropriate sexual comments on the pool deck and at travel
2 meets. Schubert was told of Jewell's improper behavior, including from the family
3 of a 2012 Olympic gold medal winner, but once again he did nothing. Ultimately
4 the complaints overwhelmed the FAST Board. It was clear that they could no longer
5 be "swept under the rug." Jewell ultimately was forced out of FAST. Undeterred,
6 Schubert later brought Jewell back to the pool deck as a GWSC coach (despite the
7 known existence of a pending USA Swimming investigation into Coach Jewell's
8 wrongful interaction with young female swimmers).

9 18. Plaintiff is informed and believes and on that basis alleges that in 2010, a dispute
10 developed between Schubert and USA Swimming and/or one or more of its current or former
11 Board members. It is believed that Schubert wanted USA Swimming to provide additional
12 funds for coaches and elite programs he was operating and/or organizing in Southern
13 California (including the FAST program). Others at USA Swimming were not happy about this
14 and pressured USA Swimming to defund Coach Schubert's "Centers of Excellence."

15 19. Eventually, USA Swimming decided, after placing him on suspension, to relieve
16 Schubert and his staff from their duties in November of 2010. By all accounts, USA
17 Swimming had every reason to terminate Schubert due to recent instances of irrational and
18 abusive behavior that he exhibited to his swimmers, particularly during the Pan Pacific
19 Championships in August of 2010.

20 20. Plaintiff is informed and believes and on that basis alleges that following his
21 dismissal, Coach Schubert decided to pursue litigation against USA Swimming arising from
22 his national team dismissal. Negotiations between Schubert and USA Swimming began in
23 approximately early December of 2010. Initially, USA Swimming employed a hard line stance
24 with Schubert and his attorney as it maintained that it was perfectly justified to terminate
25 Schubert and that the employment claim was otherwise meritless. USA Swimming was
26 prepared to dig its heels into the ground and fight Schubert every step of the way in order to
27 defend its conduct.

28 //

1 21. In order to leverage the amount of any compensation that he would receive from
2 USA Swimming, Schubert decided to cash in on his “insurance policy” in the form of the
3 incriminating information that he had in his possession concerning Coach Hutchison. Schubert
4 knew that USA Swimming, then embroiled in the midst of a sex abuse scandal, would be
5 highly motivated to conceal from public scrutiny certain information about a high profile
6 coach, i.e. Coach Hutchison, who had been involved in sexual misconduct. Thus, Schubert
7 surreptitiously leaked some of the information he had concerning Coach Hutchison to a
8 nationally known sports writer named Amy Shipley of the Washington Post in or about
9 December of 2010. Ms. Shipley subsequently published an article about Coach Hutchison’s
10 sexual misconduct on or about December 30, 2010. The story stunned the USA Swimming
11 community. Yet another black eye was levied against the leaders of USA Swimming and a
12 revolt was brewing. The full story involving Coach Hutchison, if revealed, would cause many
13 “heads to roll” of some of the most powerful leaders of USA Swimming. Schubert succeeded
14 in getting USA Swimming’s attention. The following implied message was sent: “This is just
15 the beginning. Pay me what I want and no further information gets leaked.”

16 22. During this time, Schubert (and his wife) became close to plaintiff, who they
17 sought out for emotional, physical and financial support during this trying time. In fact, at one
18 point during this time period Schubert and plaintiff had a heart-to-heart discussion concerning
19 the widespread problem within USA Swimming of coaches sexually abusing minor athlete
20 swimmers. Plaintiff confided in Schubert that this was a problem she took extremely seriously.
21 Schubert then confided that in the 1980’s he learned that a swim coach named Rick Curl was
22 sexually abusing an athlete and that the swimmer developed an eating disorder and other
23 emotional problems. Plaintiff asked him what he did for her and he responded that he did
24 nothing since her problems were “too big” and it would take away from the team so he decided
25 not to help her in the interest of the other swimmers. Schubert confessed, “I feel so guilty that I
26 did not help her, when she asked me for help.” Stunned, plaintiff asked him why didn’t you go
27 to law enforcement or child protective services, to which Schubert replied, “It was too late, the
28 statute of limitations had run out, I didn’t know what to do, but I told Chuck Wielgus

1 [Executive Director in late 2010 of USA Swimming]. I asked him what he was going to do
2 about Rick Curl.” Plaintiff then pleaded with Schubert to do the right thing and report it to law
3 enforcement immediately. With resignation, Schubert responded, “I tried, but they [USA
4 Swimming and Chuck Wielgus] wouldn't listen.”¹

5 23. Soon after the Washington Post article rocked the swimming world, USA
6 Swimming quickly retreated from its previously intractable legal position and quickly- and
7 more importantly quietly- started negotiating with Schubert on his employment claim.
8 Eventually Schubert received a whopping \$625,000 in settlement with USA Swimming, of
9 which \$500,000 served as compensation for a tort claim and therefore Schubert was not
10 obligated to pay taxes on these monies. In exchange, Schubert agreed to give up any further
11 service with the national team staff (as well as any potential service with the USA Swimming
12 Board of Directors). Most importantly, in exchange for these monies, Schubert entered into a
13 “confidentiality agreement” whereby he promised that he would not make public any further
14 information that he possessed concerning the affairs at FAST, including instances of sexual
15 misconduct by Coach Hutchison. Further, USA Swimming made Schubert promise, in
16 exchange for these monies, that he would not publicly speak about any sexual abuse issues in
17 general, including what he knew about Kelley Currin, Rick Curl and USA Swimming’s
18 knowledge of same. For the price of \$625,000, therefore, Coach Schubert was effectively
19 silenced and further information, including the incriminating photographs which he had in his
20

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22
23 ¹ Kelley Currin began swimming for Rick Curl in 1981 when she was 13 years old. She continued swimming for him until
24 1988. Plaintiff is informed and believes and on that basis alleges that beginning in 1982, and continuing up through 1987, Ms.
25 Currin was sexually abused by Coach Curl. In August of 1988, Ms. Currin was released from the hospital, where she was
26 treated for depression and an eating disorder related to the sexual abuse perpetrated by Curl. Defendant Mark Schubert began
27 coaching Ms. Currin at the University of Texas in the fall of 1988. Ms. Currin expressly informed Schubert that she had
28 recently been in the hospital due to the sexual abuse committed by Coach Curl. Schubert, on information and belief, did
nothing in response to this information: he made no effort to advise Currin’s parents or the authorities of Currin’s abuse;
nothing was done to prevent Curl from having further access to other vulnerable swimmers. The only action believed to have
been taken by Schubert in response to this information was to apprise Chuck Wielgus (the Executive Director of USA
Swimming). It is believed that Schubert provided information to USA Swimming concerning coach Curl's abuse on at least
three (3) separate occasions. USA Swimming is believed to have done absolutely nothing in response to this information
despite having a clear duty to act consistent with then existing USA Swimming rules and regulations.

1 possession depicting Coach Hutchison, were kept under lock and key in Coach Schubert's safe.
2 On information and belief, this collaborative effort on behalf of the leaders of USA Swimming
3 constituted a conspiracy to commit a crime as it is against the law to condition the payment of
4 monetary compensation in exchange for not reporting illegal activity to the authorities.

5 24. Not surprisingly, at or about this time, the allegations concerning Coach
6 Hutchison were "swept under the rug." USA Swimming proudly announced on February 14,
7 2011 that it had "fully investigated" the charges into Coach Hutchison and publicly cleared
8 him of any wrongdoing. Thus, Coach Hutchison maintained his USA Swimming membership
9 in good standing and was allowed to continue coaching and having unfettered access to minor
10 swimmers. However, Coach Hutchison mysteriously left FAST and is now coaching at various
11 parts of the country, including the State of Washington where he currently is the Director of
12 King Aquatics. This method of covering up and relocating swim coaches was not unique in the
13 USA Swimming world as similar action had previously been taken with other notable coaches
14 such as former National Team Director Everett Uchiyama and Aaron Bartleson.

15
16 **PLAINTIFF IS HIRED BY SCHUBERT AS A GWSC SWIM COACH AND**
17 **MANAGER:**

18 25. While Coach Schubert was dealing with personal issues, including his ongoing
19 legal dispute with USA Swimming, plaintiff was asked by Schubert (and his wife) to assist
20 Schubert with various personal matters. Although still residing in northern California, plaintiff
21 agreed to help Schubert.

22 26. Plaintiff is informed and believes and on that basis alleges that in or about early
23 2011, the Schubert asked the Golden West Board to serve as a GWSC "volunteer" coach
24 pending resolution of this legal dispute with USA Swimming (with the understanding that he
25 would be compensated retroactively upon final settlement with USA Swimming).

26 27. Soon thereafter, in or about July 2011, Schubert was formally retained by
27 GWSC. He was given the position of team Head Coach and named GWSC's Chief Executive
28 Officer (CEO).

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1 28. In the spring of 2011, Schubert asked plaintiff to come to Southern California
2 and assist him in the management of the GWSC. Plaintiff agreed. Upon arrival in Southern
3 California, plaintiff's duties "assisting" Schubert ultimately included, *inter alia*: 1) handling all
4 GWSC affairs when Schubert was absent; 2) dealing with complex organizational matters; 3)
5 updating the club's human resource protocols and generally handling staff hiring matters; 4)
6 mentoring newly retained coaches; 5) construction of an age group and feeder swim program;
7 and 6) develop and enlarge the club's master swimming program. Schubert enticed plaintiff to
8 help him in Southern California with the plea, "I can't do it without you. "

9 29. One of plaintiff's first duty in the summer of 2011 was to salvage a swim camp
10 that Schubert had agreed to run. In so doing plaintiff had to, prepare promotional literature,
11 recruit swimmers, donate financial resources, and generally dedicate time necessary to make
12 the camp a success without pay or compensation.

13 30. After a great deal of encouragement by Schubert, plaintiff ultimately agreed to
14 move to Southern California so that she could work full-time for Shubert and GWSC. She did
15 this leaving her family behind in Northern California.

16 31. When plaintiff first started "assisting" Schubert, she had an oral understanding
17 with him that she would be a lawful partner in whatever endeavor or opportunity came his way
18 when he recovered from his emotional and physical problems related to his ongoing dispute
19 with USA Swimming. It was initially envisioned that plaintiff would split time between
20 Northern and Southern California. However, it soon became clear that plaintiff's duties were
21 such that she could no longer continue commuting from Northern California (and could no
22 longer continue her coaching duties with teams in Northern California). It was ultimately
23 agreed that she should move to Southern California and dedicate herself full-time to Schubert
24 and GWSC. She then became a Head Age Group Coach managing day to day coaching
25 operations of the Age Group Program, Master's Program, Pathways "Lesson" Program, and
26 Swim4Me program. She was left with the complete task of setting up a web based team
27 management infrastructure and swims database for the team which had more than doubled in
28 size since she came to Golden West Swim Club. She also invested much time in developing a

1 business plan and business concept for an Aquatic Center in Huntington Beach.

2 32. In or about July 2011, plaintiff entered into an oral employment agreement with
3 Schubert (in his position as GWSC Head Coach (and CEO)).² Pursuant to the terms of
4 plaintiff's oral agreement, plaintiff agreed to leave her job and home in northern California and
5 move to Southern California so that she could dedicate her full-time effort to the management
6 of GWSC (as well as various coaching duties for GWSC). In exchange, it was agreed that
7 plaintiff would receive a starting compensation of \$30,000 per year along with a quarterly
8 performance bonus. As per the oral agreement it was agreed that year 1's salary would just
9 cover expenses related to housing expenses, but that upon successful growth of GWSC she
10 would be fairly compensated for her time. Finally, in light of plaintiff's decision to move to
11 Southern California, she needed an assurance of continued employment. Accordingly, Schubert
12 agreed that plaintiff would not be terminated by GWSC without good cause.

13 33. Plaintiff was given the formal job titles of: 1) General Team Manager; 2) Head
14 Age Group Coach; 3) Age Group Gold Level Coach; and 4) Associate Senior Coach.

15 34. In or about July 2011, plaintiff purchased a new home in Orange County,
16 California.

17 35. Plaintiff's job performance at GWSC was excellent. Her "Gold Group"
18 consistently improved their times and she was responsible for developing Nationally and LSC
19 "top ten" ranked age group athletes and doubled the number of Junior Olympic qualifiers.
20 Moreover, due to Schubert's continued absence, she was effectively required to run the day-to-
21 day operations of GWSC.

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27 ² Pursuant to the GWSC by-laws, Schubert, as the GWSC Head Coach and CEO, had exclusive authority to hire GWSC's
28 assistant coaches and staff and determine their powers, duties and compensation. (See Article 9, subparagraph 9.9, Bylaws, Golden West Swim Club.)

1 36. By all accounts plaintiff performed her job duties admirably and in a
2 professional manner. At no time during her employment with GWSC was plaintiff ever subject
3 to a negative job performance evaluation, nor was she ever subject to any discipline.

4 **PLAINTIFF REPEATEDLY ADVISES SCHUBERT THAT COACH JEWELL IS**
5 **BEHAVING IMPROPERLY WITH UNDERAGE FEMALE SWIMMERS**
6 **PLACED UNDER HIS CONTROL:**

7 37. As previously noted, when Schubert assumed control of GWSC, he asked his
8 longtime friend, William Jewell, to work as an assistant coach at GWSC. Jewell agreed and, in
9 or about July 2011, he was appointed GWSC's volunteer "Assistant Senior Elite Coach."

10 38. Pursuant to GWSC's bylaws (as well as its organizational structure), Jewell
11 worked under the direct supervision of Schubert.

12 39. When Jewell was asked by Schubert to come coach at GWSC, Schubert was
13 fully aware that Jewell remained subject to a formal USA Swimming investigation concerning
14 his improper interactions with young female swimmers while coaching at FAST. Schubert
15 decided to go ahead and place Jewell in charge of various female swimmers at GWSC despite
16 this pre-existing knowledge.

17 40. When Jewell began coaching at GWSC, it soon became obvious that his
18 retention was a serious mistake. From the inception of his employment, Jewell was seen
19 behaving in an improper manner vis-à-vis the minor female athletes at the GWSC pool. Jewell's
20 inappropriate conduct included:

- 21 a) The physical touching of the young female swimmers in an inappropriate (if not
22 unlawful) manner;
- 23 b) Providing physical "massages" on young female swimmers while they sat pool-
24 side between his legs;
- 25 c) Allowing young female swimmers to sit on his lap;
- 26 d) Improper sexual innuendo directed at his young swimmers;
- 27 e) Constant use of profanity;
- 28 f) Meeting alone with his female swimmers.

1 41. After observing much of the above described conduct, and after fielding a series
2 of complaints from club coaches, plaintiff met with Schubert and told him that something
3 needed to be done about Jewell's behavior.

4 42. Schubert ignored plaintiff's concerns. There was no investigation, follow-up or
5 sanction. Instead, Schubert simply kept matters to himself; he failed to report this information
6 to his Board, USA Swimming or any of the affected parents.

7 43. Jewell's inappropriate behavior continued. At one point he was discovered sitting
8 in his vehicle with a young swimmer in the front seat. He was further seen walking through the
9 parking lot with his arm around the back of at least two female swimmers. In addition, it was
10 learned that both Schubert and Jewell were providing unauthorized car rides to swimmers in
11 violation of USA Swimming and GWSC rules.

12 44. Plaintiff reiterated her complaints to Schubert, noting that Jewell's behavior was
13 in clear violation of the USA Swimming's Code of Conduct. Concerned with the safety and
14 well-being of GWSC's swimmers, plaintiff told Schubert that he should, *at a minimum*, restrict
15 Jewell from having any further contact with any female swimmers pending a thorough
16 investigation of her complaints. Schubert reassured the entire coaching staff that he had
17 control over the situation, demanded that he be verbally consulted and no more written emails
18 or documentation be created concerning Jewell's behavior or any employee for that matter.
19 Schubert also emphasized that he was responsible for Jewell and would remedy the situation.
20 Jewell then disappeared from the GWSC club coaching and was now coaching the college
21 swimming exclusively in Jan-April of 2012. During this time, Jewell was exclusively under
22 Schubert's control and supervision and had nothing to do with USA Swimming or Golden
23 West Swim Club. GWSC coaches assumed he had been reassigned. Plaintiff was told he was
24 removed from GWSC coaching until the investigations and lawsuit Jewell had with FAST had
25 cleared

26 45. Despite plaintiff's repeated protestations, Schubert insisted that Jewell was
27 innocent of any wrongdoing. Plaintiff responded that she personally observed much of his
28 improper behavior herself, and that even if Schubert was skeptical, prudence dictated that he

1 instruct Jewell to avoid further contact with the club's female swimmers pending resolution of
2 USA Swimming's investigation. Angered, Schubert told plaintiff to leave matters alone.
3 Plaintiff responded:

4 This has nothing to do with me. I like Bill [Jewell], I just don't want him touching
5 the girls for any reason, meeting with them alone or cursing. I want him and all of us to
6 follow the USA Swimming rules. The rules are there for the right reasons to protect kids
7 and to protect coaches from unfair allegations. Follow the rules and no one gets hurt.

8 46. Eventually Schubert advised plaintiff that he would ask Jewell to suspend his
9 coaching duties pending clearance from USA Swimming.

10 47. Shortly thereafter plaintiff discovered Jewell on the pool deck, once again
11 coaching the club's female athletes. Plaintiff reported this to Schubert, who advised that Jewell
12 had been "cleared" and was "fully exonerated" by USA Swimming.

13 48. Unconvinced, plaintiff contacted USA Swimming for the purpose of ascertaining
14 the status of the investigation as well as to lodge her own complaint concerning Jewell's
15 conduct at GWSC. Specifically, she spoke with Executive Director Chuck Wielgus, who did
16 nothing other than to refer her to an "Athlete Protection Officer" named Susan Woessner, who
17 advised that, contrary to what Schubert represented, Jewell, after well over a year, was still
18 under investigation and in any instance had not been "exonerated". Schubert had lied.

19 49. During this time-frame, Jewell's wrongful behavior once again continued. He
20 was seen pulling certain girls out of practice with his hands on their waists shifting them, and
21 with his body next to, and behind, them, presumably demonstrating "stroke technique."

22 50. Plaintiff and others were not happy with this, so she once again complained to
23 Schubert. Schubert remained unmoved and sought to justify Jewell's behavior by noting,
24 remarkably, that Jewell was touching athletes in a manner consistent with USA Swimming's
25 rules. According to Schubert, Jewell was fully within his rights in touching and massaging his
26 athletes, that this was accepted practice of swim coaches and endorsed and demonstrated by
27 those at the top of USA Swimming. He also told plaintiff that the new rules were stupid and
28 ridiculous.

1 51. Convinced that her oral protestations had not gotten through to Schubert, on or
2 about June 18, 2012, plaintiff sent Schubert an e-mail stating:

3 One thing to think about as investigation is going on of Bill Jewell....if he
4 comes up uncleared [sic] and is banned....you will look very bad for
5 bringing him back. They did not give any indication he is cleared, in fact
6 he is still being investigated. Of course he can work, the onus, negligence,
7 and responsibility is on "you" and the club and the officers of the club if
8 something happens or an athlete becomes offended at his touching of them
9 or texting or personal contact. The officers of the club to my knowledge
10 have not been told the truth about his absence. If he goes down the whole
11 club goes down. Please do not forget that you were confronted by the
12 coaching staff a while ago about perceived or what could be perceived as
13 inappropriate behavior by Mr. Jewell before any of this stuff ever came up
14 with FAST. If they are brought in to testify for any reason, the truth will
15 vet itself out. This will not make you look good.

16 As you can tell, I am very uncomfortable with this. VERY.....and as usual
17 you are not going to heed my advice or listen.

18 I am asking you in writing "to cover my own ass" to do the RIGHT
19 THING here. He can come back when in fact he has been cleared. I am
20 strongly advising you not to have him in a position where he is texting,
21 providing personal information, or touching in "any manner" minor
22 athletes.

23 I have been advised by my attorney to write this letter to you. Look I care
24 about you but I will not be an accessory to a poor decision.

25 52. Plaintiff is informed and believes and on that basis alleges that Schubert was
26 angered with plaintiff's decision to put her complaint in writing. In fact, after sending the
27 above-referenced e-mail, and her email and phone calls to USA Swimming, plaintiff was called
28 into Schubert's office and threatened that her future at GWSC as a coach would be destroyed if
she continued to question Jewell's behavior. "How could you go to USA Swimming?"
Schubert yelled. Schubert advised plaintiff that he needed Jewell to help cover practices. After
calming down, Schubert told plaintiff that he would deal with Jewell after the "USA
Swimming Olympic Trials" in Omaha Nebraska." When plaintiff questioned the propriety of
continuing to leave Jewell alone with young kids, Schubert responded, "I'm giving Bill [Jewell]
a chance," "my decision is final."

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1 53. While at swim trials, plaintiff discovered, and reported to Schubert, that at least
2 one underage swimmer had been seen drinking alcohol. Schubert sought to defend this
3 behavior by questioning the drinking age of the state where swim trials were taking place. It is
4 believed that nothing was done by Schubert with respect to this incident.

5 54. A few days later plaintiff received an e-mail from a parent wherein she was
6 advised that a 12-year-old member of the GWSC team was asked by Jewell to cheat in a relay
7 (by improperly impersonating another swimmer who failed to show up). Fortunately, the
8 swimmer's parent refused to allow her daughter to cheat, fearing that she would be disqualified
9 thereby jeopardizing her future swimming prospects. Plaintiff reported this incident to
10 Schubert.

11 55. Thereafter, plaintiff received complaints that most of the senior girls were now
12 wearing bikinis at swim practice while she and Schubert were gone at the "USA Swimming
13 Olympic Trials". This was wholly unacceptable (and a clear violation Schubert's own policies
14 and Club rules). Plaintiff discovered that Jewell unilaterally authorized this behavior and
15 instructed athletes not to tell Schubert or Rianda.

16 56. Plaintiff once again complained to Schubert. However, as with her earlier
17 complaints, nothing was done in response to Jewell's ongoing wrongful conduct. Instead - It
18 soon became clear - Schubert decided to address this ongoing problem by simply getting rid of
19 the messenger.

20 57. On or about July 11, 2012, Schubert formally terminated plaintiff's employment
21 with GWSC. Schubert's only explanation for terminating plaintiff was the suggestion that, "I
22 am not happy and you are not happy, it is time for you to leave."

23 58. It was made clear to plaintiff that the only reason her employment was
24 terminated was due to her complaints to Schubert and then USA Swimming concerning Coach
25 Jewell's unlawful, wrongful and inappropriate conduct.

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FIRST CAUSE OF ACTION
(Wrongful Termination In Violation Of Public Policy)

59. Plaintiff re-alleges and incorporates by reference and every allegation contained in paragraphs 1 through 58 as if fully set forth herein.

60. The above-described conduct of defendants, and each of them, constitutes wrongful employment retaliation and wrongful termination of plaintiff in violation of public policy.

61. The above-described conduct of defendants, and each of them, constitutes a violation of California Labor Code section 6310, which prohibits an employer from terminating an employee because she “has made a bona fide oral or written complaint ... of unsafe working conditions, or work practices, in his or her employment or place of employment.”

62. As a result of defendants’ wrongful termination of her, plaintiff has suffered and continues to suffer damages, in the form of lost wages and other employment benefits, and severe emotional and physical distress, the exact amount of which will be proven at trial.

WHEREFORE, plaintiff prays for relief as set forth herein.

SECOND CAUSE OF ACTION
(Breach of Employment Contract)

63. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 62 as if fully set forth herein.

64. In July 2011, plaintiff entered into an oral employment agreement with defendants whereby defendants agreed, *inter alia*, that (a) plaintiff would not be demoted, discharged or otherwise disciplined except for good cause and with notice and an opportunity to be heard; and (b) plaintiff would be evaluated in a fair and objective manner and afforded progressive discipline.

65. This oral employment agreement was evidenced in various written documents, including but not limited to defendants personnel policies and procedures.

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74. Defendants and each of them acted for the purpose of causing plaintiff to suffer financial loss and severe emotional distress and physical distress and are guilty of oppression and malice, justifying an award of exemplary and punitive damages.

WHEREFORE, plaintiff prays for relief as set forth herein.


PRAYER

WHEREFORE, plaintiff prays for judgment as against all defendants as follows:

1. For compensatory damages according to proof and prejudgment interest thereon to the extent allowable by law;
2. For exemplary and punitive damages according to proof;
3. For attorney fees on the third cause of action;
4. For costs of suit; and
5. For such other and further relief as the court may deem proper.

Dated: September 17, 2012

CORSIGLIA McMAHON & ALLARD, LLP

By: 
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