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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

TIFFANY GASTON and AMBER
TOMLINSON, individually, on behalf of
other members of the general public similarly
situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiffs,

v.

ONRAD, INC., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: RIC2004221

Assigned for All Purposes to
Honorable Sunshine S. Sykes
Department 6

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records);
- (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

- (9) Violation of California Labor Code § 246(l) (Unpaid Sick Pay);
(10) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004)
(11) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs TIFFANY GASTON and AMBER TOMLINSON (“Plaintiffs”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

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4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Riverside. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California, County of Riverside.

PARTIES

5. Plaintiff TIFFANY GASTON is an individual residing in the State of California, County of Riverside. Plaintiff AMBER TOMLINSON is an individual residing in the State of California, San Bernadino County.

6. Defendant ONRAD, INC., at all times herein mentioned, was and is, upon information and belief, a Delaware corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Riverside.

7. At all relevant times, Defendants ONRAD, INC., was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants ONRAD, INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief alleges, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused

1 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
2 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
3 capacities when the same have been ascertained.

4 10. Defendants ONRAD, INC., and DOES 1 through 100 will hereinafter
5 collectively be referred to as “Defendants.”

6 11. Plaintiffs further allege that Defendants directly or indirectly controlled or
7 affected the working conditions, wages, working hours, and conditions of employment of
8 Plaintiffs and the other class members so as to make each of said Defendants employers and
9 employers liable under the statutory provisions set forth herein.

10 **CLASS ACTION ALLEGATIONS**

11 12. Plaintiffs bring this action on his own behalf and on behalf of all other members
12 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
13 Procedure section 382.

14 13. The proposed class is defined as follows:

15 All current and former non-exempt or hourly paid employees of Defendants who
16 worked in California during the period from October 20, 2016 through the date
17 of December 28, 2021 (or if any such person is incompetent, deceased, or
18 unavailable due to military service, the person’s legal representative or
19 successor in interest evidenced by reasonable verification).

20 14. Plaintiffs reserve the right to establish subclasses as appropriate.

21 15. The class is ascertainable and there is a well-defined community of interest in
22 the litigation:

23 a. Numerosity: The class members are so numerous that joinder of all class
24 members is impracticable. The membership of the entire class is
25 unknown to Plaintiffs at this time; however, the class is estimated to be
26 greater than fifty (50) individuals and the identity of such membership is
27 readily ascertainable by inspection of Defendants’ employment records.

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- 1 b. Typicality: Plaintiffs' claims are typical of all other class members'
- 2 claims as demonstrated herein. Plaintiffs will fairly and adequately
- 3 protect the interests of the other class members with whom he has a well-
- 4 defined community of interest.
- 5 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
- 6 each class member, with whom they have a well-defined community of
- 7 interest and typicality of claims, as demonstrated herein. Plaintiffs have
- 8 no interest that is antagonistic to the other class members. Plaintiffs'
- 9 attorneys, the proposed class counsel, are versed in the rules governing
- 10 class action discovery, certification, and settlement. Plaintiffs have
- 11 incurred, and during the pendency of this action will continue to incur,
- 12 costs and attorneys' fees, that have been, are, and will be necessarily
- 13 expended for the prosecution of this action for the substantial benefit of
- 14 each class member.
- 15 d. Superiority: A class action is superior to other available methods for the
- 16 fair and efficient adjudication of this litigation because individual joinder
- 17 of all class members is impractical.
- 18 e. Public Policy Considerations: Certification of this lawsuit as a class
- 19 action will advance public policy objectives. Employers of this great
- 20 state violate employment and labor laws every day. Current employees
- 21 are often afraid to assert their rights out of fear of direct or indirect
- 22 retaliation. However, class actions provide the class members who are
- 23 not named in the complaint anonymity that allows for the vindication of
- 24 their rights.

25 16. There are common questions of law and fact as to the class members that

26 predominate over questions affecting only individual members. The following common

27 questions of law or fact, among others, exist as to the members of the class:

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- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiffs and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiffs and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiffs and the other class members to worked overtime and earned incentive pay;
- e. Whether Defendants deprived Plaintiffs and the other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the Labor Code, including, *inter alia*, section 226;
- j. Whether Defendants failed to keep requisite payroll records as required by Labor Code section 1174;
- k. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs;

- 1 l. Whether Defendants failed to pay sick leave as required by Labor Code
2 section 246(l);
- 3 m. Whether Defendants' conduct was willful or reckless;
- 4 n. Whether Defendants engaged in unfair business practices in violation of
5 Business & Professions Code section 17200, *et seq.*;
- 6 o. The appropriate amount of damages, restitution, and/or monetary
7 penalties resulting from Defendants' violation of California law; and
- 8 p. Whether Plaintiffs and the other class members are entitled to
9 compensatory damages pursuant to the Labor Code.

10 **GENERAL ALLEGATIONS**

11 17. During the relevant time period set forth herein, Defendants employed Plaintiffs
12 and other persons as hourly-paid or non-exempt employees within the State of California.

13 18. Defendants, jointly and severally, employed Plaintiff TIFFANY GASTON as an
14 hourly-paid non-exempt employee from approximately February 2015 to December 2018 in
15 the State of California, County of Riverside.

16 19. Defendants, jointly and severally, employed Plaintiff AMBER TOMLINSON as
17 an hourly-paid non-exempt employee from approximately September 2016 to November 2020
18 in the State of California, County of Riverside.

19 20. Defendants had the authority to hire and terminate Plaintiffs and other class
20 members; to set work rules and conditions governing Plaintiffs' and other class members'
21 employment; and to supervise their daily employment activities.

22 21. Defendants exercised sufficient authority over the terms and conditions of
23 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
24 and the other class members.

25 22. Defendants directly hired and paid wages and benefits to Plaintiffs and other
26 class members.

27 23. Defendants continue to employ hourly-paid or non-exempt employees within the
28 State of California.

1 24. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
2 forty (40) hours in a week during their employment with Defendants.

3 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
5 employees within the State of California. This scheme involved, *inter alia*, failing to pay them
6 for all hours worked, missed meal periods, and missed rest breaks, and failing to properly
7 calculate and pay overtime and sick leave in violation of California law.

8 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and other class members were entitled to receive
10 certain wages for overtime compensation and that Plaintiffs and other class members were not
11 receiving wages for overtime compensation.

12 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 failed to provide Plaintiffs and other class members the required rest and meal periods during
14 the relevant time period as required under the Industrial Welfare Commission Wage Orders
15 and thus they are entitled to any and all applicable penalties.

16 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and other class members were entitled to receive all
18 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
19 the other class members' regular rate of pay when a meal period was missed, late or
20 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
21 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
22 period was missed, late or interrupted.

23 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and other class members were entitled to receive all
25 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs'
26 and the other class members' regular rate of pay when a rest period was missed, late or
27 interrupted, and that Plaintiffs and other class members did not receive all rest periods or
28 payment of one additional hour of pay at their regular rate of pay when a rest period was

missed, late or interrupted.

30. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and other class members were entitled to receive at least minimum wages for compensation and that Plaintiffs and other class members were not receiving at least minimum wages for all hours worked.

31. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and other class members were entitled to receive the wages owed to them upon discharge or resignation, including overtime and minimum wages and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact, receive such wages owed to them at the time of their discharge or resignation.

32. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and other class members were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, Plaintiffs and other class members did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiffs and other class members.

33. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to reimbursement for necessary business-related expenses.

34. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiffs and other class members in accordance with California law, but, in fact, did not keep complete and accurate payroll records for Plaintiffs and other class members.

35. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive sick leave pay. Plaintiffs and the other class members did not receive sick leave pay as required under Labor Code section 246(l).

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1 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that they had a duty to compensate Plaintiffs and other class
3 members pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
5 represented to Plaintiffs and other class members that they were properly denied wages, all to
6 increase Defendants' profits.

7 37. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
9 worked. Plaintiffs and other class members were required to work more than eight (8) hours
10 per day and/or forty (40) hours per week without overtime compensation.

11 38. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
13 Plaintiffs and other class members.

14 39. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
16 hours worked.

17 40. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
19 discharge or resignation.

20 41. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
22 members.

23 42. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
25 members.

26 43. As a pattern and practice, during the relevant time period set forth herein,
27 Defendants failed to reimburse Plaintiffs and the other class members for necessary business-
28 related expenses and costs.

44. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay the Plaintiffs and the other class members the requisite sick leave pay.

45. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and other class members pursuant to California law in order to increase Defendants' profits.

46. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against ONRAD, INC. and DOES 1 through 100)

47. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein.

48. Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

49. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

50. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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51. Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

52. During the relevant time period set forth herein, Plaintiffs and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

53. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and other class members (but not all).

54. Defendants' pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of Labor Code sections 510 and 1198, and is, therefore, unlawful.

55. Pursuant to Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against ONRAD, INC. and DOES 1 through 100)

56. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. During the relevant time period set forth herein, the IWC Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

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1 58. During the relevant time period set forth herein, Labor Code section 226.7
2 provides that no employer shall require an employee to work during any meal or rest period
3 mandated by an applicable order of the IWC.

4 59. During the relevant time period set forth herein, the applicable IWC Wage
5 Order and Labor Code section 512(a) provide that an employer may not require, cause or
6 permit an employee to work for a work period of more than five (5) hours per day without
7 providing the employee with a meal period of not less than thirty (30) minutes, except that if
8 the total work period per day of the employee is no more than six (6) hours, the meal period
9 may be waived by mutual consent of both the employer and employee.

10 60. During the relevant time period set forth herein, the applicable IWC Wage
11 Order and Labor Code section 512(a) further provide that an employer may not require, cause,
12 or permit an employee to work for a work period of more than ten (10) hours per day without
13 providing the employee with a second uninterrupted meal period of not less than thirty (30)
14 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
15 meal period may be waived by mutual consent of the employer and the employee only if the
16 first meal period was not waived.

17 61. As a pattern and practice, during the relevant time period set forth herein,
18 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
19 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
20 by mutual consent, were required to work for periods longer than five (5) hours without an
21 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

22 62. As a pattern and practice, during the relevant time period set forth herein,
23 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
24 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
25 periods by mutual consent, were required to work for periods longer than ten (10) hours
26 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
27 period.

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1 63. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
3 time in excess of six (6) hours were required to work for periods longer than five (5) hours
4 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
5 period.

6 64. As a pattern and practice, during the relevant time period set forth herein,
7 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
8 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
9 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
10 a rest period.

11 65. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants intentionally and willfully required Plaintiffs and other class members (but not all)
13 to work during meal periods and failed to compensate Plaintiffs and the other class members
14 (but not all) the full meal period premium for work performed during meal periods.

15 66. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay Plaintiffs and other class members (but not all) the full meal period
17 premium due pursuant to Labor Code section 226.7.

18 67. Defendants' conduct violates applicable IWC Wage Order and Labor Code
19 sections 226.7 and 512(a).

20 68. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b),
21 Plaintiffs and other class members are entitled to recover from Defendants one additional hour
22 of pay at the employee's regular rate of compensation for each workday that the meal or rest
23 period is not provided.

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75. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members (but not all) the full rest period premium due pursuant to Labor Code section 226.7

76. Defendants' conduct violates applicable IWC Wage Orders and Labor Code section 226.7.

77. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against ONRAD, INC. and DOES 1 through 100)

78. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 77 and each and every part thereof with the same force and effect as though fully set forth herein.

79. During the relevant time period set forth herein, Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

80. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and other class members (but not all) as required, pursuant to Labor Code sections 1194, 1197, and 1197.1.

81. Defendants' failure to pay Plaintiffs and other class members the minimum wage as required violates Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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82. Pursuant to Labor Code section 1197.1, Plaintiffs and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

83. Pursuant to Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201, 202, and 203)

(Against ONRAD, INC. and DOES 1 through 100)

84. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 83, and each and every part thereof with the same force and effect as though fully set forth herein.

85. During the relevant time period set forth herein, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

86. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and other class members (but not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

87. Defendants' pattern and practice of failing to pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

88. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

89. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the daily wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

90. Plaintiffs and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against ONRAD, INC. and DOES 1 through 100)

91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. During the relevant time period set forth herein, Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated,

1 showing the month, day, and year, and a copy of the statement or a record of the deductions
2 shall be kept on file by the employer for at least three years at the place of employment or at a
3 central location within the State of California.

4 93. As a pattern and practice, Defendants have intentionally and willfully failed to
5 provide Plaintiffs and other class members (but not all) with complete and accurate wage
6 statements. The deficiencies include, but are not limited to, the failure to include the total
7 number of hours worked by Plaintiff and other class members.

8 94. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
9 other class members have suffered injury and damage to their statutorily protected rights.

10 95. More specifically, Plaintiffs and other class members have been injured by
11 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
12 denied both their legal right to receive, and their protected interest in receiving, accurate and
13 itemized wage statements pursuant to Labor Code section 226(a).

14 96. Plaintiffs and other class members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants' failure to comply with Labor Code
16 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 97. Plaintiffs and other class members are also entitled to injunctive relief to ensure
18 compliance with this section, pursuant to California Labor Code section 226(g).

19 **SEVENTH CAUSE OF ACTION**

20 **(Violation of California Labor Code § 1174(d))**

21 **(Against ONRAD, INC. and DOES 1 through 100)**

22 98. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
23 through 97, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 99. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central
26 location in the state or at the plants or establishments at which employees are employed,
27 payroll records showing the hours worked daily by and the wages paid to, and the number of
28 piece-rate units earned by and any applicable piece rate paid to, employees employed at the

1 respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case shall be keep on file for not
3 less than two years.

4 100. Defendants have intentionally and willfully failed to keep accurate and complete
5 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other
6 class members.

7 101. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiffs
8 and the other class members have suffered injury and damage to their statutorily-protected
9 rights.

10 102. More specifically, Plaintiffs and the other class members have been injured by
11 Defendants' intentional and willful violation of Labor Code section 1174(d) because they were
12 denied both their legal right and protected interest in having available, accurate, and complete
13 payroll records pursuant to Labor Code section 1174(d).

14 **EIGHT CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 2800 and 2802)**

16 **(Against ONRAD, INC. and DOES 1 through 100)**

17 103. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 102, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 104. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its
21 employee for all necessary expenditures incurred by the employee in direct consequence of the
22 discharge of his or her job duties or in direct consequence of his or her obedience to the
23 directions of the employer.

24 105. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
25 other class members (but not all) for all necessary business-related expenses and costs. Plaintiffs
26 and other class members are entitled to recover from Defendants their business-related expenses
27 and costs incurred during the course and scope of their employment, plus interest accrued from
28 the date on which the employee incurred the necessary expenditures at the same rate as

1 judgments in civil actions in the State of California.

2 **NINTH CAUSE OF ACTION**

3 **(Violation of California Labor Code § 246(l))**

4 **(Against ONRAD, INC. and DOES 1 through 100)**

5 106. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 105, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 107. Labor Code section 246(l) requires that employers provide employees with paid
9 sick leave of not less than one hour per every 30 hours worked. Labor Code section 246(l) also
10 requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the
11 workweek in which the employee uses paid sick time or a rate calculated by dividing the
12 employee's total wages, not including overtime premium pay, by the employee's total hours
13 worked in the full pay periods of the prior 90 days of employment.

14 108. During the relevant time period, Defendants failed to pay employees with paid
15 sick leave that complied with Labor Code section 246(l).

16 109. Pursuant to Labor Code section 246(l), Plaintiffs and other class members are
17 entitled to recover unpaid sick pay, as well as interest, costs, and attorneys' fees.

18 **TENTH CAUSE OF ACTION**

19 **(Violation of Labor Code Section 2698, *et seq.* ("PAGA"))**

20 **(Against ONRAD, INC. and DOES 1 through 100)**

21 110. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
22 through 109, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 111. PAGA expressly establishes that any provision of the Labor Code which provides
25 for a civil penalty to be assessed and collected by the California Labor and Workforce
26 Development Agency ("LWDA"), or any of its departments, divisions, commissions, boards,
27 agencies or employees for a violation of the Labor Code, may be recovered through a civil action
28 brought by an aggrieved employee on behalf of himself or herself, and other current or former

employees.

112. On September 28, 2021, Plaintiff AMBER TOMLINSON timely provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Plaintiff AMBER TOMLINSON believes that on or about December 2, 2021, the sixty-five (65) days' notice period expired, and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff AMBER TOMLINSON has exhausted the statutory time period to bring this action. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the September 28, 2021 written notice to the LWDA.

113. Plaintiff AMBER TOMLINSON and the other non-exempt employees are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all current or former hourly-paid or non-exempt employees of Defendants from September 28, 2020 to December 28, 2021, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

114. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code sections 510, 1194, 1197, and 1198.

115. As a pattern and practice, Defendants failed to compensate Plaintiff AMBER TOMLINSON and other aggrieved current and former employees for all hours worked, resulting in a failure to pay all minimum wages and overtime wages, where applicable.

Failure to Provide Meal Periods and Rest Breaks

116. In accordance with the mandates of Labor Code sections 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or major fraction thereof and were further required to provide their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

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1 117. As a pattern and practice, Defendants failed to provide Plaintiff AMBER
2 TOMLINSON and other aggrieved current and former employees with legally-mandated meal
3 periods and rest breaks and failed to pay proper compensation for this failure.

4 **Failure to Timely Pay Wages During Employment**

5 118. At all times relevant herein, Defendants were required to pay their employees
6 within a specified time period pursuant to the mandate of Labor Code section 204.

7 119. As a pattern and practice, Defendants failed to pay Plaintiff AMBER
8 TOMLINSON and other aggrieved current and former employees all wages due and owing them
9 within the required time period.

10 **Failure to Timely Pay Wages Upon Termination**

11 120. At all times relevant herein, Defendants were required to pay their employees all
12 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
13 to 204.

14 121. As a result of Defendants' Labor Code violations alleged above, Defendants
15 failed to pay Plaintiff AMBER TOMLINSON and the other aggrieved former employees their
16 final wages pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time
17 penalties pursuant to Labor Code section 203.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 122. At all times relevant herein, Defendants were required to keep *accurate* records
20 regarding their employees pursuant to the mandate of Labor Code sections 226 and 1174(d).

21 123. As a result of Defendants' various Labor Code violations, Defendants failed to
22 keep accurate records regarding Plaintiff AMBER TOMLINSON and other aggrieved current
23 and former employees. For example, Defendants failed in their affirmative obligation to keep
24 accurate records regarding Plaintiff AMBER TOMLINSON's and other aggrieved current and
25 former employees' gross wages earned, total hours worked, all deductions, net wages earned,
26 and all applicable hourly rates and the number of hours worked at each hourly rate. Defendants
27 also failed to provide Plaintiff AMBER TOMLINSON and other aggrieved current and former
28 employees complete and accurate wage statements in violation of Labor Code section 226(a).

1 The deficiencies include, but are not limited to, the failure to include the total number of hours
2 worked by Plaintiff AMBER TOMLINSON and other aggrieved employees.

3 **Failure to Reimburse Business Expenses**

4 124. At all times relevant herein, Defendants were required to reimburse their
5 employees for any and all necessary expenditures or losses incurred by the employees in direct
6 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
7 sections 2800 and 2802.

8 125. As a pattern and practice, Defendants failed to pay Plaintiff AMBER
9 TOMLINSON and other aggrieved current and former employees all business expenses incurred
10 and owing them within the required time period.

11 **Failure to Properly Calculate and Pay Sick Leave**

12 126. At all times relevant herein, Defendants were required, pursuant to Labor Code
13 section 246(l), to provide employees with paid sick leave of not less than one hour per every 30
14 hours worked and pay paid sick leave at a non-exempt employee's regular rate of pay for the
15 workweek in which the employee uses paid sick time or a rate calculated by dividing the
16 employee's total wages, not including overtime premium pay, by the employee's total hours
17 worked in the full pay periods of the prior 90 days of employment.

18 127. As a pattern and practice, Defendants failed to pay sick leave that complied with
19 Labor Code section 246(l) to Plaintiff AMBER TOMLINSON and other aggrieved current and
20 former employees.

21 **Penalties**

22 128. Pursuant to Labor Code section 2699, Plaintiff AMBER TOMLINSON,
23 individually, and on behalf of other current and former aggrieved employees, requests and is
24 entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees
25 and costs pursuant, as well as all statutory penalties against Defendants, and each of them,
26 including but not limited to:

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1 a. Penalties under Labor Code section 2699 in the amount of a hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
3 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
4 violation;

5 b. Penalties under Code of Regulations Title 8 section 11040 in the amount
6 of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one
7 hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
8 violation;

9 c. Penalties under Labor Code section 210 in addition to, and entirely
10 independent and apart from, any other penalty provided in the Labor Code in the amount of a
11 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
12 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation;

14 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
15 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
16 hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent
17 violation;

18 e. Any and all additional penalties as provided by the Labor Code and/or
19 other statutes; and

20 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and
21 2699, and any other applicable statute.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

24 **(Against ONRAD, INC. and DOES 1 through 100)**

25 129. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
26 through 128, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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1 130. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
2 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure section 1021.5.

5 131. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of Business & Professions Code
7 section 17200, *et seq.*

8 132. A violation of Business & Professions Code section 17200, *et seq.* may be
9 predicated on the violation of any state or federal law. In this instant case, Defendants' pattern
10 and practice of requiring Plaintiffs and other class members work overtime hours without
11 paying them proper compensation violate Labor Code sections 510 and 1198. Additionally,
12 Defendants' pattern and practice of requiring Plaintiffs and other class members, to work
13 through their meal and rest periods without paying them proper compensation violate Labor
14 Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to
15 timely pay wages to Plaintiffs and other class members violate Labor Code sections 201 and
16 202. Defendants also violated Labor Code sections 226(a), 246(l), 1194, 1197, 2800 and 2802.

17 133. As a result of the herein described violations of California law, Defendants
18 unlawfully gained an unfair advantage over other businesses.

19 134. Plaintiffs and other class members (but not all) have been personally injured by
20 Defendants' unlawful business acts and practices as alleged herein, including but not
21 necessarily limited to the loss of money and/or property.

22 135. Pursuant to Business & Professions Code sections 17200, *et seq.*, Plaintiffs and
23 other class members are entitled to restitution of the wages withheld and retained by
24 Defendants during a period that commences four years prior to the filing of this Complaint; an
25 award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
26 applicable laws; and an award of costs.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, individually, and on behalf of other members of the general public similarly
3 situated, requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually on behalf of all other members of the general
6 public similarly situated, and on behalf of aggrieved employees pursuant to PAGA, pray for
7 relief and judgment against Defendants, jointly and severally, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiffs be appointed as representatives of the Class;
11 3. That counsel for Plaintiffs be appointed as Class Counsel; and
12 4. That Defendants provide to Class Counsel immediately the names and most
13 current contact information (address, e-mail, and telephone numbers) of all class members.

14 **As to the First Cause of Action**

15 5. That the Court declare, adjudge, and decree that Defendants violated Labor
16 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
17 overtime wages due to Plaintiffs and other class members (but not all);

18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;

20 7. For pre-judgment interest on any unpaid overtime compensation commencing
21 from the date such amounts were due;

22 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 Labor Code section 1194; and

24 9. For such other and further relief as the court may deem just and proper.

25 **As to the Second Cause of Action**

26 10. That the Court declare, adjudge, and decree that Defendants violated Labor
27 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
28 all meal periods (including second meal periods) to Plaintiffs and other class members (but not

all);

11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge, and decree that Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and other class members (but not all);

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and other class members (but not all);

1 24. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 25. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due;

5 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 Labor Code section 1194(a);

7 27. For liquidated damages pursuant to Labor Code section 1194.2; and

8 28. For such other and further relief as the court may deem just and proper.

9 **As to the Fifth Cause of Action**

10 29. That the Court declare, adjudge, and decree that Defendants violated Labor
11 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time
12 of termination of the employment of Plaintiffs and other class members (but not all) no longer
13 employed by Defendants;

14 30. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
17 class members who have left Defendants' employ;

18 32. For pre-judgment interest on any unpaid compensation from the date such
19 amounts were due; and

20 33. For such other and further relief as the court may deem just and proper.

21 **As to the Sixth Cause of Action**

22 34. That the Court declare, adjudge, and decree that Defendants violated the record
23 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
24 Plaintiffs and other class members (but not all), and willfully failed to provide accurate
25 itemized wage statements thereto;

26 35. For actual, consequential, and incidental losses and damages, according to
27 proof;

28 ///

- 1 36. For statutory penalties pursuant to Labor Code section 226(e);
2 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
3 Code section 226(g); and
4 38. For such other and further relief as the court may deem just and proper.

5 **As to the Seventh Cause of Action**

6 39. That the Court declare, adjudge, and decree that violated Labor Code section
7 1174(d) by willfully failing to keep accurate and complete payroll records showing the hours
8 worked daily and the wages paid to Plaintiffs and the other class members;

9 40. For actual, consequential, and incidental losses and damages, according to
10 proof;

11 41. For statutory penalties pursuant to Labor Code section 1174.5; and

12 42. For such other and further relief as the court may deem just and proper.

13 **As to the Eight Cause of Action**

14 43. That the Court declare, adjudge, and decree that Defendants violated Labor
15 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
16 members (but not all) for all necessary business-related expenses as required by Labor Code
17 sections 2800 and 2802;

18 44. For actual, consequential, and incidental losses and damages, according to
19 proof;

20 45. For the imposition of civil penalties and/or statutory penalties;

21 46. For punitive damages and/or exemplary damages according to proof at trial;

22 47. For reasonable attorneys' fees and costs of suit incurred herein; and

23 48. For such other and further relief as the court may deem just and proper.

24 **As to the Ninth Cause of Action**

25 49. That the Court declare, adjudge, and decree that Defendants violated Labor
26 Code sections 246(l) by willfully failing to properly calculate and pay sick leave or provide
27 adequate notice of sick leave benefits to Plaintiffs and the other class members;

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1 50. For actual, consequential, and incidental losses and damages, according to
2 proof;

3 51. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due; and

5 52. For such other and further relief as the court may deem just and proper.

6 **As to the Tenth Cause of Action**

7 53. That the Court declare, adjudge, and decree that Defendants violated Labor
8 Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations
9 of Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 246(l), 510, 512(a),
10 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802;

11 54. For costs and attorneys' fees pursuant to Labor Code Sections 210, 1194, and
12 2699, and any other applicable statute; and

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

14 **As to the Eleventh Cause of Action**

15 56. That the Court declare, adjudge and decree that Defendants violated Business
16 and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and other class
17 members all overtime compensation due to them, failing to provide all meal and rest periods to
18 Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and
19 the other class members, failing to timely pay Plaintiffs' and other class members' wages,
20 failing to properly calculate and pay sick leave, etc.

21 57. For restitution of unpaid wages to Plaintiffs and other class members and all
22 pre-judgment interest from the day such amounts were due and payable;

23 58. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violation of Business and Professions Code sections 17200, *et seq.*;

26 59. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code
27 of Civil Procedure section 1021.5;

28 ///

1 60. For injunctive relief to ensure compliance with this section, pursuant to
2 Business and Professions Code sections 17200, *et seq.*; and

3 61. For such other and further relief as the court may deem just and proper.
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5 Dated: February 9, 2022

JUSTICE LAW CORPORATION

7 By: Haig Hogdanian
8 Douglas Han
9 Shunt Tatavos-Gharajeh
10 Chancellor Nobles
11 Haig Hogdanian
12 *Attorneys for Plaintiffs*
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EXHIBIT 1

September 28, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: ONRAD, INC.

Dear Representative:

We have been retained to represent Amber Tomlinson against Onrad, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "ONRAD").

Ms. Tomlinson is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Tomlinson may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Onrad, Inc. is a Delaware corporation located at 4040 E. Camelback Rd. Suite 250, Phoenix, Arizona 85018.

ONRAD employed Ms. Tomlinson as an hourly-paid non-exempt Team Lead within one year of the data of this letter (until in or around November of 2020²) in the State of California. ONRAD directly controlled the wages, hours and/or working conditions of Ms. Tomlinson and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Ms. Tomlinson does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Tomlinson will amend this notice when the true names and capacities are known. Ms. Tomlinson is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Tomlinson and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Tomlinson's PAGA cause of action is tolled.

The “aggrieved employees” that Ms. Tomlinson may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of ONRAD within the State of California.

ONRAD failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Tomlinson has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at ONRAD, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

ONRAD has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Tomlinson and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. ONRAD failed to compensate Ms. Tomlinson and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. ONRAD also failed to include non-discretionary bonuses and incentives in aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Ms. Tomlinson and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

During the relevant time period, ONRAD failed to pay Ms. Tomlinson and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, ONRAD routinely required Ms. Tomlinson and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with ONRAD's policies and expectations. ONRAD also failed to provide coverage to Ms. Tomlinson and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, ONRAD also failed to authorize and permit Ms. Tomlinson and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, ONRAD failed to compensate Ms. Tomlinson and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Tomlinson and other aggrieved employees' regular rate of pay.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, ONRAD failed to pay Ms. Tomlinson and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, ONRAD failed to pay Ms. Tomlinson and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ONRAD did not provide Ms. Tomlinson and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ONRAD were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Tomlinson and other aggrieved employees, (2) total hours worked by Ms. Tomlinson and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Tomlinson and other aggrieved employees (4) all deductions for Ms. Tomlinson and other aggrieved employees, (5) net wages earned by Ms. Tomlinson and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Tomlinson and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Tomlinson and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty 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. Ms. Tomlinson and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, ONRAD failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Tomlinson and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ONRAD did not provide Ms. Tomlinson and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Tomlinson and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ONRAD, including for purchasing electronics they needed to perform their work, and using their personal cellular phones for work related call.

We believe that Ms. Tomlinson and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Tomlinson will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of ONRAD within one year of the date of this letter, as allowed by law.

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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Onrad, Inc.

c/o CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, California 95833

Agent for Service of Process for Onrad, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On March 18, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Gaston, et al. v. Onrad, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-846363-21**
Court Case No.: RIC2004221
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 18, 2022, at Pasadena, California.



Mariah Anderson