

ON 11/28/2022

By /s/ Nesha Gaines
Deputy Clerk

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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

MICHAEL CONNER, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

RED WING BRANDS OF AMERICA,
INC., a Minnesota corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 22-CIV-03830

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004**

DEMAND OVER \$25,000.00

1 Plaintiff Michael Conner (“Plaintiff”) hereby submits this First Amended Representative
2 Action Complaint (“Complaint”) against Defendant Red Wing Brands of America, Inc.
3 (“Defendant”), and Does 1 through 50 (collectively, “Defendants”), individually, and on behalf
4 of himself and all aggrieved employees of Defendant, for penalties for violations of the
5 California Labor Code as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512, 2698, *et seq.*, and the applicable
9 Wage Orders of the Industrial Welfare Commission (“IWC”).

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendant.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by: (a) failing to provide accurate and complete wage
15 statements in violation of Labor Code section 226; (b) failing to pay meal and rest period
16 premium at the regular rate of pay in violation of Labor Code sections 226.7 and 512; and (c)
17 failing to pay sick pay at the regular rate of pay and pay all final wages owed in violation of
18 Labor Code sections 201, 202, 203, 204, and 246.

19 **JURISDICTION AND VENUE**

20 4. The Court has jurisdiction over the violations of the California Labor Code
21 sections 201, 202, 203, 204, 226, 226.7, 246, 512, 2698, *et seq.*, and the applicable IWC Wage
22 Orders.

23 5. Venue is proper in San Mateo County because Plaintiff worked for Defendants in
24 the city of Millbrae, county of San Mateo, California.

25 **PARTIES**

26 6. Plaintiff was employed by Defendants as a Store Manager from about November
27 2021 to about August 11, 2022. Plaintiff worked as an hourly non-exempt employee.

28 7. Plaintiff was and is the victims of the policies, practices, and customs of

1 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
2 by California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512, 2698, *et seq.*, and
3 the applicable IWC Wage Orders.

4 8. Plaintiff is informed and believes, and based thereon alleges, that The Red Wing
5 Brands of America, Inc. was and is a Minnesota corporation which operates as a shoe company
6 throughout the United States, including San Mateo County, California.

7 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
9 and partnerships, licensed to do business and actually doing business in the State of California.
10 As such, and based upon all the facts and circumstances incident to Defendants' business,
11 Defendants are subject to the California Labor Code and the applicable IWC Wage Orders.

12 10. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and members of the general public and
18 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
19 complained of herein.

20 11. At all times herein mentioned, each defendant participated in the doing of the acts
21 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
22 and each of them, were the agents, servants and employees of each of the other defendants, as
23 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
24 course and scope of said agency and employment.

25 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
26 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
27 joint venturer of, or working in concert with each of the other co-Defendants and was acting
28 within the course and scope of such agency, employment, joint venture, or concerted activity. To

1 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
2 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

4 13. At all times herein mentioned, Defendants, and each of them, were members of,
5 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
6 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

7 14. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
12 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
13 damages as herein alleged.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

16 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

17 15. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
18 though fully set forth herein.

19 16. Plaintiff brings this cause of action as a proxy for the State of California and in
20 this capacity, seeks penalties on behalf of all Aggrieved Employees from September 14, 2021,
21 through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
22 226.7, 246, 512, 2698, *et seq.*, as identified above, for: (a) failing to provide accurate and
23 complete wage statements in violation of Labor Code section 226; (b) failing to pay meal and
24 rest period premium at the regular rate of pay in violation of Labor Code sections 226.7 and 512;
25 and (c) failing to pay sick pay at the regular rate of pay and pay all final wages owed in violation
26 of Labor Code sections 201, 202, 203, 204, and 246.

27 17. Plaintiff and Aggrieved Employees earned non-discretionary remuneration,
28 including without limitation, commissions and/or incentives. Plaintiff and Aggrieved Employees

1 were paid meal and rest period premium for missed meal and rest periods at the base rate of pay
2 as Defendants failed to include any non-discretionary remuneration earned into the calculation of
3 the regular rate. Specifically, whenever Plaintiff and Aggrieved Employees received meal and
4 rest period premium pay during workweeks in which they earned non-discretionary
5 remuneration, the meal and rest period premium was paid at the base rate of pay. Further,
6 Defendants failed to pay Plaintiff and Aggrieved Employees all the wages owed upon separation
7 of employment due to the unpaid missed meal and rest period premiums.

8 18. Additionally, Plaintiff and Aggrieved Employees were not paid sick pay at the
9 regular rate of pay. Specifically, when Plaintiff and Aggrieved Employees earned non-
10 discretionary remuneration, thus increasing the regular rate of pay, sick pay was paid at the base
11 rate of pay rather than the regular rate of pay. At the termination of Plaintiff and the Aggrieved
12 Employees' employment, they were not paid all final wages owed, including all of their sick pay
13 wages.

14 19. Finally, Plaintiff and Aggrieved Employees received itemized wage statements
15 concurrent with the payment of wages. As a result of Defendants' failure to pay proper rates of
16 pay for meal/rest period premiums, and sick pay wages, the wage statements issued to Plaintiff
17 and Aggrieved Employees failed to identify the correct gross wages earned, net wages earned,
18 and correct hourly rates of pay.

19 20. On or about September 14, 2022, Plaintiff sent written notice to the California
20 Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code §
21 226, pursuant to Labor Code § 2698, et seq., the Private Attorneys General Act ("PAGA").
22 Plaintiff also sent written notice of said Labor Code violations to Defendant via certified mail
23 pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has
24 not provided written notice regarding whether it intends to investigate the Labor Code violations
25 set forth in Plaintiff's written notice.

26 21. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and
27 all applicable civil penalties for Defendants' violation of Labor Code §§ 226 and 2698 for the
28 time period described above, on behalf of himself and other Aggrieved Employees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
5 the PAGA, Labor Code section 226.3, and for costs and attorneys' fees;

6 2. On all causes of action for attorneys' fees and costs as provided by Labor Code
7 section 2699 and California Code of Civil Procedure section 1021.5; and

8 3. For such other and further relief as the Court may deem just and proper.
9

10 DATED: November 28, 2022

DIVERSITY LAW GROUP, P.C.

11
12 By: 

Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

Shalom "Christine" Choo

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15 Attorneys for Plaintiff and the Aggrieved
16 Employees
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
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 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On November 28, 2022, I served the following document(s) described as: **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** on the interested parties in this action as follows:

Soojin Kang Jeffrey S. Ranen Sona Patel Lewis Brisbois Bisgaard & Smith LLP 633 West 5 th Street, Suite 4000 Los Angeles, California 90071	<i>Attorneys for Defendant Red Wing Brands of America, Inc.</i> Soojin.Kang@lewisbrisbois.com Jeffrey.Ranen@lewisbrisbois.com Sona.Patel@lewisbrisbois.com
Dept23@sanmateocourt.org complexcivil@sanmateocourt.org	<i>San Mateo Superior Court</i>

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 28, 2022, at Los Angeles, California.



Erika Mejia