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Attorneys for Plaintiff and the Class

**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.: 22CIV03830

[Assigned for all purposes to the Hon. V. Raymond
Swope, Department 23]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF’S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: August 12, 2024
Time: 3:00 P.M.
Dept.: 23

Action Filed: September 20, 2022
Trial Date: Not Set

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Michael Conner (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. On or about September 14, 2022, Plaintiff submitted his written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor & Workforce Development Agency (“LWDA”) and Defendant. As set forth in the PAGA Notice, Plaintiff alleged that Defendant violated Labor Code §§ 201-204, 226, 226.7, 246, and 512. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s September 14, 2022 PAGA Notice.

3. On October 17, 2022, Defendant filed a letter with the LWDA asserting that it cured the violation of Labor Code § 226(a)(8).

4. On November 15, 2022, the LWDA issued a decision confirming that Defendant cured the violation of Labor Code § 226(a)(8), which pertained to whether Defendant identified the correct name of the legal entity that was the employer.

5. On September 20, 2022, Plaintiff filed a class action complaint against Defendant in the Superior Court of California, County of San Mateo, alleging causes of action for (1) violation of Labor Code § 226.7 and 512; (2) violation of Labor Code §§ 201-204 and 246; (3) violation of Labor Code § 226; and (4) violation of Business and Professions Code § 17200, *et seq.* (the “Action”).

6. On November 28, 2022, Plaintiff filed a First Amended Complaint alleging a single cause of action for violation of Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 201, 204, 226, 226.7, 246, and 512. The First Amended Complaint is the operative complaint.

7. On or about January 13, 2023, Defendant file an answer to the operative complaint, denying all material allegations of the Complaint and asserting affirmative defenses.

1 8. Thereafter, the Parties engaged in informal settlement discussions. *Id.* The Parties
2 exchanged informal discovery, including exchanging information regarding the number of
3 employees who received non-discretionary remuneration and meal period premiums and/or sick
4 pay during the same pay period, which allowed Plaintiff to conduct liability and exposure
5 analysis.

6 9. Following arm's-length negotiations and discussions between the Parties, during
7 which the Parties spoke at length about the strengths and weaknesses of each side's claims and
8 defenses, and the scope of Defendant's purported liability, the Parties were able to reach an
9 agreement in principle. The Parties then finalized the settlement terms and is the result of
10 informed and non-collusive arm's length negotiations. Attached hereto as **Exhibit B** is a true
11 and correct copy of the Settlement Agreement.

12 **SUMMARY OF THE PROPOSED SETTLEMENT**

13 10. The Settlement Agreement requires Defendant to pay a total of One Hundred
14 Fifty-Five Thousand Dollars (\$155,000.00) (the "Gross Settlement Amount"). Agreement ¶ I.L.
15 This is an allocation of the Gross Settlement Amount for the release of PAGA claims by
16 Allegedly Aggrieved Employees and the Service Payment to Plaintiff for the general release of
17 his individual claims. *Id.* ¶¶ III.A, V.E. The balance of the Gross Settlement Amount remaining
18 after deduction of the approved Plaintiff's Counsel's attorneys' fees and costs, PAGA
19 Representative Service Payment, and Settlement Administration Costs in the amount of
20 \$86,856.10 will be available for distribution to the LWDA and Allegedly Aggrieved Employees.
21 *Id.* ¶¶ I.M, I.N. Seventy-five percent (75%) of the net amount, or approximately \$65,142.08,
22 will be paid to the LWDA for PAGA penalties. Agreement ¶ I.M. The remaining twenty-five
23 percent (25%), or approximately \$27,714.03, will be distributed to the Allegedly Aggrieved
24 Employees. Agreement ¶ VI.B.

25 11. The portion of the Gross Settlement Amount (or Net Employee Fund) distributed
26 to Allegedly Aggrieved Employees will be distributed on a *pro rata* basis, based on the number
27 of pay periods each individual Allegedly Aggrieved Employee was paid meal period premium
28 and/or sick pay wages and non-discretionary remuneration during the same pay period (or

Applicable Pay Periods) during the PAGA Period. Agreement ¶¶ I.D, VI.B.b.

12. Defendant represents that there are approximately 244 Allegedly Aggrieved Employees who worked approximately 2,315 Applicable Pay Periods during the PAGA Period. *Id.* ¶ III.A.b. Based on the number of Allegedly Aggrieved Employees, each aggrieved employee will be entitled to recover, on average, approximately **\$88.99** each. The amount any particular Allegedly Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods during which he or she was paid meal period premium and/or sick pay wages and non-discretionary remuneration during the same pay period. *Id.* This is fair, as it directly allocates greater penalties to individual Allegedly Aggrieved Employees who have allegedly suffered greater harm.

13. Funds from uncashed Settlement Share checks will be distributed to the State of California Controller's Office's Unclaimed Property Fund in the name of the individual to whom the funds relate (Agreement ¶ VI.B.c).

14. As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's request for attorneys' fees of \$51,666.67, which is approximately one-third of the Gross Settlement Amount. Agreement ¶ V.B. While the Settlement Agreement provides for reimbursement of documented litigation costs of up to \$7,500.00, Plaintiff's Counsel is only requesting for reimbursement of \$1,977.23 in actual litigation costs. *Id.* ¶ V.A. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for a Service Payment of \$10,000.00, in recognition for Plaintiff's efforts in obtaining the benefits of the settlement on behalf of other purported aggrieved employees and for Plaintiff's general release of his claims against Defendant. Agreement ¶ V.E.

15. Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *Id.* ¶ I.W. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be \$4,500.00. *Id.* ¶¶ I.W, I.X. Concurrently with this Motion, I submit the Declaration of Jodey Lawrence detailing Phoenix's experience and qualifications as a settlement administrator.

1 16. The scope of the Released Claims by the Allegedly Aggrieved Employees is
2 appropriately tailored as it only releases claims for civil penalties under PAGA arising out of the
3 facts alleged or that could have been alleged in this lawsuit and does not release any other
4 claims. Further, other than Plaintiff, none of the Allegedly Aggrieved Employees are bound by
5 any general release or waiver of the protections of Code of Civil Procedure § 1542 as part of this
6 settlement. Agreement *Id.* ¶¶ I.T.

7 **POTENTIAL CIVIL PENALTIES**

8 17. Defendant produced data for each of Plaintiff's claims, which permitted Plaintiff
9 to analyze Defendant's potential exposure and liability. Defendant's potential exposure could be
10 as high as \$822,650.00 if the Court were to award a \$100 penalty for each pay period
11 encompassed by the proposed settlement for violations based on failure to pay meal and/or rest
12 break premiums and sick pay at the regular rate and \$250 penalty for each pay period a wage
13 statement was issued that included incentive payments that did not state the rate of pay or
14 corresponding hours worked.

15 18. Specifically, there were approximately 2,315 pay periods wherein meal and/or
16 rest break premiums and sick pay and non-discretionary remuneration were paid during the same
17 pay period, which amounts to a maximum exposure of \$231,500.00, if the Court were to award
18 \$100 for each alleged violation. Plaintiff also contended that this resulted in derivative penalties
19 for violation of Labor Code § 226 because the rate of pay and corresponding hours worked were
20 not displayed accurately as a result of these violations. If the Court were to award, \$250 per
21 violative wage statement, Defendant's exposure for this claim could be as high as \$578,750.00
22 (2,315 x \$250). Finally, there were 124 former employee aggrieved employees which amounts
23 to a maximum exposure of \$12,400.00 for PAGA penalties predicated on waiting time penalties
24 assessed at \$100 per violation.

25 19. Although Plaintiff is reasonably confident that he would prevail at trial,
26 proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in
27 addition to the still-developing law under PAGA. Here, Defendant has denied violation of any
28 applicable laws and liability for any claims asserted in the Action. Defendant argued the

penalties assessed, if any, would be significantly less than Plaintiff contends. For one, Defendant argued that Plaintiff could not prevail on his derivative wage statement theory of liability for several reasons. First, Defendant would have argued that penalties under Section 226 are subject to a “good faith” defense. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in violation of Section 226, any violation is not knowing and intentional.”). The California Supreme Court also recently approved a good faith defense to the imposition of Section 226 penalties, which further undermines the certainty of recovering these damages even if Plaintiff prevailed on liability. *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024). Even if successful on liability, Defendant argued the appropriate penalty for a violation of Section 226 was \$100, not \$250. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 353-54 (2021) (rejecting *Raines* and holding \$100 is appropriate penalty).

20. Defendant also argued that even if Plaintiff could show that Defendant paid meal/rest premiums at less than the regular rate of pay, Plaintiff would still have to demonstrate that Defendant did not meet its obligation under the Labor Code and *Brinker* to provide employees a meal period. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed.”). Defendant argued this would preclude imposition of penalties altogether.

21. Furthermore, Defendant argued that the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties at its discretion. *Id.*; *see* Labor Code § 2699(e)(2) (“if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). Should Defendant have prevailed on its defenses whether at summary judgment or at trial, the State of California and purported aggrieved employees would have been left with zero or minimal recovery. *Id.*

22. Under the circumstances of this case, the payment of \$155,000.00 in civil penalties is fair, adequate, and reasonable. The payment of \$155,000.00 in exchange for a release

1 of only those claims for civil penalties that are pleaded in the Action or that could have been
2 pleaded based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in
3 the Action will have a substantial deterrent effect on Defendant and other California employers
4 and will confer benefits on the Aggrieved Employees, who will each receive a portion of the
5 settlement.

6 23. In the present case, the Gross Settlement Amount is approximately 18.84% of the
7 maximum exposure (\$155,000/\$822,650.00), which is a very reasonable settlement amount. In
8 sum, this settlement is fair, reasonable, and consistent with PAGA's policies and purposes under
9 these circumstances.

10 24. I strongly believe that Plaintiff can prevail at trial. However, after taking into
11 account sharply disputed factual and legal issues involved in this litigation, the risks attending
12 further prosecution, and the substantial benefits to be received pursuant to the compromise and
13 settlement of the litigation, I have concluded that settlement on the terms set forth in the
14 Settlement Agreement is appropriate and in the best interests of Plaintiff and the Allegedly
15 Aggrieved Employees.

16 **ATTORNEY EXPERIENCE AND LODESTAR INFORMATION**

17 25. From the inception of the case, Plaintiff's Counsel have zealously represented the
18 interests of Plaintiff and the aggrieved employees. The settlement was obtained for the benefit of
19 the aggrieved employees, as opposed to the individual Plaintiff.

20 26. I am one of the primary attorneys on this matter. My qualifications are as follows:
21 I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013,
22 magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a
23 Notes and Comments Editor on the Southwestern Law Review. I also received awards for
24 achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at
25 the United States District Court for the Central District. Immediately after law school, I taught
26 several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I
27 taught those courses for approximately four years.

28 27. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately

1 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
2 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.
3 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

4 28. From February 2016, through Fall 2017, I practiced at the international law firm
5 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
6 companies in Multi-District Litigation primarily in the product liability sphere. I also
7 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
8 judgment decision regarding trade secret issues, in addition to working in several other practice
9 groups. During this time, the firm routinely charged \$500 per hour for my services to clients.

10 29. From September 2017, through September 2018, I served as a law clerk to a
11 Judge sitting on the United States District Court, Central District of California. I regularly
12 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
13 working on wage and hour class actions.

14 30. I am currently an associate at the law firm Diversity Law Group, P.C., an
15 employment law firm that has handled numerous wage and hour class and individual actions, on
16 both plaintiff and defense sides. My current practice focuses on employment matters involving
17 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
18 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
19 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
20 currently or have handled numerous wage and hour class action lawsuits with the firm, including,
21 but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906,
22 Stanislaus County Superior Court); *Cunningham, et al. v. Diverse Business Solutions* (Case No.
23 CIVDS1817095, San Bernardino County Superior Court); *Heredia v. Eddie Bauer LLC* (Case
24 No. 16CV300475, United States District Court, Northern District of California); *Parsons v.*
25 *Estenson Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); and
26 *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior Court).

27 31. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
28 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our

1 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

2 32. I have also assisted the firm in numerous wage and hour class action mediations.

3 33. To date, I have incurred approximately 48.1 hours in connection with the
4 litigation of this lawsuit. Attached hereto as **Exhibit C** is a chart summarizing the amount of
5 work I have incurred to date on this matter.

6 34. The total lodestar for my hours will be approximately \$31,265 based on 48.1 total
7 hours, at an hourly rate of \$650.00 per hour. In January 2024, I increased my hourly rate to \$650
8 per hour. I was approved at this rate in *Jaramillo v. USS-UPI, LLC*, Contra Costa County Case
9 No. C22-00641 (April 24, 2024). Prior to that, I have been approved at \$600.00 per hour in
10 *Weybrew v. BEI Construction*, Solano County Superior Court Case No. FCS055658 (January 14,
11 2022), *In re See's Candies Wage and Hour Cases*, Case No. JCCP5004 (March 30, 2022), Los
12 Angeles Superior Court, *Pevey v. Lumber City Corp*, San Bernardino County Superior Court
13 Case No. CIVDS2010240 (May 2, 2022), *Ross v Stater Bros. Markets*, San Bernardino County
14 Superior Court Case No. CIVDS1902518 (September 8, 2022), and *Schneider v. Amazon Retail*
15 *LLC*, Los Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022). Prior to
16 that throughout 2020 and 2021, I was approved at an hourly rate of at \$550.00 per hour in *James*
17 *v RADC Enterprises, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS1933035
18 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*, Santa Clara County Superior Court,
19 Case No. 19CV345169 (October 22, 2020), *Melbert Magpugay v. Harbor Electronics, Inc.*,
20 Santa Clara County Superior Court Case No. 19CV352547 (January 27, 2021), *Foster v.*
21 *Schindler Elevator Corp.*, Alameda County Superior Court Case no. RG19029640 (March 2,
22 2021), *Martin v. Streetplus Company, LLC, et al*, Los Angeles Superior Court Case No.
23 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain Enterprises, LLC*, Solano County
24 Superior Court, Case No. FCS05858 (August 4, 2021).

25 35. My office has incurred costs in the amount of \$1,977.23. The costs are all
26 litigation related costs, including filing and service fees, postage fees, and court fees. Attached
27 hereto as **Exhibit D** is copy of my firm's record of costs incurred in connection with prosecution
28 of this lawsuit.

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


Max W. Gavron

EXHIBIT A

MIKE CONNER

c/o DIVERSITY LAW GROUP, P.C.
515. S. Figueroa St., Suite 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

September 13, 2022

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: *Conner v. Red Wing Brands of America, Inc.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly aggrieved employees against my former employer, Red Wing Brands of America, Inc. (the "Company"). Specifically, I allege that the Company:

1. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other similarly situated aggrieved employees our meal and rest period premium pay at our regular rates of pay as required by these provisions. Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's **regular rate** of compensation for each workday that the meal or rest or recovery period is not provided." Throughout our employment with the Company, other non-exempt employees and I earned non-discretionary remuneration, including, but not limited to commissions and incentives. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal and rest period premium pay. However, whenever the Company paid me and other employees our meal and rest period premium pay during periods in which we earned this non-discretionary remuneration, the meal and rest period premium was always paid at our base rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid meal and rest break premiums and Labor Code § 226 by failing to accurately identifying the accurate rate of pay, and gross and net wages earned.

2. Violated Labor Code §§ 201-204 and 246 by failing to pay all similarly situated aggrieved employees sick pay at the regular rate of pay as the Company failed to include non-discretionary remuneration, including, but not limited to commissions and incentives, into the regular rate of pay for sick pay wages. Further, as a result of such violations, the Company violated Labor Code § 226 as the wage statements failed to accurately identify the accurate rates of pay and gross/net wages earned.

3. Violated Labor Code § 226 by failing to provide accurate wage statements to me and other similarly situated aggrieved employees. Specifically, whenever wage statements were issued to us, the wage statements failed to identify the Company's accurate name. Rather, no

September 13, 2022

Page 2

name was identified as to the actual legal name of the employer, or a name that was not the employer was named on the wage statements.

The address for the Company is:

314 Main Street
Red Wing, MN 55066

Please contact my attorneys at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

A25D06FE52554BA...

Michael Conner

cc: Red Wing Brands of America, Inc. (by certified mail)

EXHIBIT B

SETTLEMENT AGREEMENT

This Agreement is made by and between Michael Conner, individually and on behalf of the Allegedly Aggrieved Employees he seeks to represent and the Labor & Workforce Development Agency (“LWDA”), on the one hand, and Red Wing Brands of America, Inc. (“Red Wing”), on the other hand, subject to both the terms and conditions hereof and the approval of the Court.

I. Definitions.

A. “Action” means the operative Complaint filed in the lawsuit filed by Plaintiff Michael Conner on September 20, 2022, entitled *Michael Conner, as an individual and on behalf of all others similarly situated v. Red Wing Brands of America, Inc., a Minnesota corporation; and Does 1 through 50, inclusive*, Superior Court of California, County of San Mateo, case number 22-CIV-03830.

B. “Agreement” means this document and **Exhibit A** hereto. **Exhibit A** is expressly incorporated into this document by reference as though fully set forth herein.

C. “Allegedly Aggrieved Employees” means all non-exempt employees employed by Red Wing in the State of California during the PAGA Period who received a meal period premium and/or sick pay wages and non-discretionary remuneration during the same pay period.

D. “Applicable Pay Periods” means the number of pay periods during which an Allegedly Aggrieved Employee was paid meal period premium and/or sick pay wages and non-discretionary remuneration during the same pay period during the PAGA Period.

E. “Approval” means the date on which the Court approves the Settlement and judgment is entered by the Court.

F. “Approval Order” means an order issued by the Court approving this Agreement as binding upon the Parties.

G. “Attorneys’ Costs Award” means the reimbursement of costs authorized by the Court to be paid to Plaintiff’s Counsel in connection with services rendered representing Plaintiff and the Allegedly Aggrieved Employees in the Action. Defendant shall not oppose an Attorneys’ Costs Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00).

H. “Attorneys’ Fee Award” means an award of attorneys’ fees authorized by the Court to be paid to Plaintiff’s Counsel for the services rendered representing Plaintiff and the Allegedly Aggrieved Employees in the Action. In no event shall the Attorneys’ Fee Award exceed one-third of the Gross Settlement Amount or Fifty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$51,666.67).

I. “Court” means the Superior Court of the State of California, County of San Mateo, where the Action is pending.

J. “Defendant” or “Red Wing” means Red Wing Brands of America, Inc.

K. “Defendant’s Counsel” means Soojin Kang, Esq. of the law firm of O’Hagan Meyer, counsel for Defendant in the Action.

L. “Gross Settlement Amount” means the total amount to be paid by Defendant not to exceed One Hundred Fifty-Five Thousand Dollars (\$155,000.00) which will be apportioned into the following amounts as set forth herein: (1) Settlement Administration Costs (not to exceed \$4,500.00) to be paid to the Settlement Administrator; (2) a Service Payment (not to exceed \$10,000.00) to be paid to Plaintiff; (3) an Attorneys’ Fee Award (not to exceed \$51,666.67) to be paid to Plaintiff’s Counsel; (4) an Attorneys’ Costs Award (not to exceed \$7,500.00) to be paid to Plaintiff’s Counsel; (5) the Net Employee Fund to be distributed for the benefit of the Allegedly Aggrieved Employees; and (6) the LWDA Payment.

M. “LWDA Payment” means seventy-five percent (75%) of the Gross Settlement Amount remaining after subtracting the Attorneys’ Fee Award, Attorneys’ Costs Award, Settlement Administration Costs, and Service Payment, to be paid by the Settlement Administrator to the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement Amount within fifteen (15) business days after Defendant makes the Gross Settlement Amount payment consistent with the terms of this Agreement.

N. “Net Employee Fund” means the net of the Gross Settlement Amount less (1) any Attorneys’ Fee Award, (2) any Attorneys’ Costs Award, (3) any Settlement Administration Costs, (4) LWDA Payment, and (5) any Service Payment.

O. “PAGA Period” means the time period of September 14, 2021, through July 15, 2023.

P. “PAGA Representative Service Payment” or “Service Payment” means an award authorized by the Court to be paid to Plaintiff in recognition of his efforts in prosecuting the Action and obtaining the settlement in a representative capacity, as well as in exchange for a general release of all claims and waiver of the protections of Civil Code section 1542. In no event shall any Service Payment to Plaintiff exceed Ten Thousand Dollars (\$10,000.00).

Q. “Parties” means Plaintiff and Defendant.

R. “Plaintiff” means the plaintiff in the Action, Michael Conner.

S. “Plaintiff’s Counsel” means the law firms of Diversity Law Group and Polaris Law Group, counsel for Plaintiff.

T. “Released Claims” means all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have reasonably been pled based on the factual allegations contained in the operative Complaint or any amendments thereto and notice(s) filed with the LWDA, including but not limited to claims

brought under the Private Attorneys General Act (“PAGA”) for civil penalties premised on the violation of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 246, and 512, and claims under Labor Code Sections 226.3 and 1021.5.

U. “Released Parties” means (a) Red Wing and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of Red Wing; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present, or future employees, officers, directors, affiliates, partners, joint venturers, co-venturers, licensors, licensees, franchisors, franchisees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, their, or its capacity as such.

V. “Settlement” means the terms and conditions set forth in this Agreement.

W. “Settlement Administration Costs” means the actual and direct costs reasonably charged by the Settlement Administrator in an amount not to exceed Four Thousand Five Hundred Dollars (\$4,500.00) for its services in administering and distributing the Gross Settlement Amount.

X. “Settlement Administrator” means the settlement administrator appointed to administer this Settlement pursuant to the Agreement, Phoenix Settlement Administrators.

Y. “Settlement Share” means the portion of the Net Employee Fund allocable to each Allegedly Aggrieved Employee as provided by this Agreement.

II. Recitals.

A. On September 14, 2022, Plaintiff, an employee of Defendant, sent a letter to the LWDA alleging Defendant violated California Labor Code sections 201-204, 226, 226.7, 246, and 512, pursuant to PAGA. On October 17, 2022, Defendant filed a letter with the LWDA, alleging that it had cured the violation of Labor Code section 226(a)(8). On November 15, 2022, the LWDA issued a decision confirming that Defendant had cured the violation of Labor Code section 226(a)(8).

B. On September 20, 2022, Plaintiff filed this Action against Defendant, alleging class action claims for violation of Labor Code sections 201-204, 226, 226.7, 246, and 512 and Business and Professions Code section 17200, *et seq.*

C. On November 28, 2022, Plaintiff amended his complaint to allege a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on underlying violations of Labor Code sections 201-204, 226, 226.7, 246, and 512. The First Amended Complaint is the operative complaint in the Action.

D. On January 13, 2023, Defendant filed an answer to Plaintiff’s First Amended Complaint, denying the material allegations and asserting various affirmative defenses.

E. Following the filing of Defendant's answer, the Parties engaged in informal settlement discussions. The Parties exchanged informal discovery, including Defendant's production of payroll data, and engaged in extensive arm's length negotiations, ultimately reaching a settlement.

F. Plaintiff has claimed, and continues to claim, that the contentions he has made in the Action have merit. Nothing in this Agreement may be construed as, or may be used as, an admission by Plaintiff that any of his claims are without merit.

G. Defendant expressly denies any liability. Defendant denies all claims, contentions, and each and every allegation made by Plaintiff in the Action. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Further, nothing in this Agreement shall constitute an admission of the accuracy of any allegation made by Plaintiff or Plaintiff's Counsel.

H. Plaintiff's Counsel and Defendant's Counsel have conducted sufficient investigation and research to reach this Agreement.

I. Plaintiff's Counsel have investigated and evaluated the applicable law and facts regarding the claims presented in the Action and the potential defenses thereto. Plaintiff's Counsel have discussed and assessed the relative strength of the fundamental premises underlying the Action and have concluded that this Settlement is fair and adequate under the circumstances.

J. Plaintiff therefore deems it desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth herein.

K. Plaintiff, on his own behalf and as a representative of the Allegedly Aggrieved Employees and the LWDA, further acknowledges and agrees that Defendant disputes the merits of the claims against it.

L. Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Action.

NOW THEREFORE, it is agreed by and between the undersigned that the Action be settled and compromised as among Plaintiff (on behalf of himself and the Allegedly Aggrieved Employees and the LWDA) and Defendant, conditioned upon approval of the Court, on the following terms and conditions.

III. Consideration from Defendant.

A. Gross Settlement Amount. In full, complete, and final settlement and satisfaction of the Action as against Defendant and the Released Parties, and all Released Claims, and subject to all of the terms, conditions, and provisions of this Agreement, including Court Approval, Defendant agrees to provide the following consideration:

- a. The Parties acknowledge and agree Defendant shall pay a total of One Hundred Fifty-Five Thousand Dollars (\$155,000.00) in consideration of the Released Claims asserted in the Action.
- b. Allegedly Aggrieved Employees. Defendant represents that there are approximately two hundred and forty-four (244) Allegedly Aggrieved Employees who worked approximately two thousand three hundred fifteen (2,315) pay periods during the Applicable Pay Periods.
- c. Escalator. Should the actual number of Applicable Pay Periods exceed 2,315 by more than ten percent (10%), i.e., be greater than 2,547, the Gross Settlement Amount will increase pro rata for any percentage higher than ten percent (10%). For example, should the actual number of Applicable Pay Periods increase by eleven percent (11%) greater than 2,315, the Gross Settlement Amount will increase by one percent (1%).
- d. Within twenty-one (21) calendar days after the Court issues the Approval Order, Defendant shall fund the Gross Settlement Amount by payment to the Settlement Administrator. Except as provided above in paragraph III.A.c., the Gross Settlement Amount is the maximum amount that Defendant will pay in connection with this Settlement under any circumstances. Once the payment is made, Defendant shall have no liability or obligation with respect to disbursement of the Gross Settlement Amount.
- e. In the event the Settlement is cancelled pursuant to this Agreement, the Court denies Approval, or an appeal leaves the Settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement and all funds in the Gross Settlement Amount provided for in this paragraph shall be returned to Defendant, with the exception of amounts paid or owing to the Settlement Administrator for Administration Costs actually incurred for services already performed, which shall be paid by Defendant if still owed.

IV. Court Approval.

A. Motion for Court Approval of Settlement. Counsel for the Parties shall jointly request a hearing before the Court to be held on the earliest practicable date to seek Approval of the Settlement. In conjunction with such hearing, Plaintiff's Counsel shall submit this

Agreement, together with Exhibit A hereto, a Motion for Court Approval of Settlement, and any other documents necessary to implement the Settlement. Plaintiff's Counsel will draft the Motion for Court Approval of Settlement, will make it available to Defendant a reasonable period of time prior to the filing of the motion, and will work with Defendant in good faith to make the motion acceptable to Defendant.

B. The Parties agree there is no statutory right to provide Allegedly Aggrieved Employees the option to opt out of the Settlement.

C. Submission to LWDA. Within ten (10) calendar days after the Court's entry of the Approval Order, Plaintiff's Counsel will submit a copy of the Court's Approval Order to the LWDA pursuant to California Labor Code section 2699(1)(3).

D. The Court shall retain jurisdiction to enforce the terms of this Agreement and the Approval Order, and this Agreement shall be admissible to prove the Settlement and the release of the Released Claims against the Released Parties.

V. Fee, Expense, and Service Payments.

A. Attorneys' Costs Award. As a part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court award them an Attorneys' Costs Award but agree that the requested Attorneys' Cost Award shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00). The Attorneys' Costs Award shall be for all claims for costs and expenses, past, present, and future incurred in the Action (exclusive of any request for an Attorneys' Fee Award as set forth in this Agreement). Defendant shall not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request for an Attorneys' Costs Award provided Plaintiff's Counsel's request for an Attorneys' Costs Award shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00). The Settlement Administrator shall pay the Attorneys' Costs Award from the Gross Settlement Amount to Plaintiff's Counsel within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

- a. If the Court awards Plaintiff's Counsel less than Seven Thousand Five Hundred Dollars (\$7,500.00) for the Attorneys' Costs Award, the remainder will be added back to the Gross Settlement Amount.

B. Attorneys' Fee Award. As part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court award them an Attorneys' Fee Award but agree that the requested Attorneys' Fee Award shall not exceed one-third of the Gross Settlement Amount, or Fifty-One Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$51,666.67). Plaintiff's Counsel shall not be permitted to petition the Court against Defendant for any additional payments for fees from Defendant unless the Escalator Clause in III.A.c. is activated, provided, however, that under no circumstance may Plaintiff's Counsel seek an Attorneys' Fee Award in excess of one-third of any increased Gross Settlement Amount resulting from the Escalator Clause. The Attorneys' Fee Award shall be for all claims for attorneys' fees, past, present, and future incurred in the Action (exclusive of any request for an Attorneys' Costs

Award as set forth in this Agreement). Defendant shall not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request for an Attorneys' Fee Award provided Plaintiff's Counsel's request for an Attorneys' Fee Award shall not exceed Fifty-One Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$51,666.67), *i.e.*, one-third of the Gross Settlement Amount. The Settlement Administrator shall pay the Attorneys' Fee Award from the Gross Settlement Amount to Plaintiff's Counsel within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

- a. If the Court awards less than one-third of the Gross Settlement Amount for the Attorneys' Fee Award, the remainder will be added back to the Gross Settlement Amount.

C. Payment of the Gross Settlement Amount to the Settlement Administrator shall constitute full satisfaction by Defendant of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the Action incurred by any attorney on behalf of Plaintiff and/or the Allegedly Aggrieved Employees and/or the LWDA, and shall relieve Defendant and Defendant's Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Plaintiff and/or Allegedly Aggrieved Employees and/or the LWDA. Plaintiff and Plaintiff's Counsel represent and warrant that there exist no attorney liens or any encumbrances on any portion of the Gross Settlement Amount.

D. Defendant's own legal fees, costs, and expenses incurred in the Action shall be borne by Defendant.

E. Service Payment. As part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court approve a Service Payment for Plaintiff in an amount not to exceed a total of Ten Thousand Dollars (\$10,000.00) for his time in initiating and pursuing the Action against Defendant, agreeing to provide a general release of all claims, and for serving as the representative of the Allegedly Aggrieved Employees and the LWDA. Defendant will not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request, provided that the Service Payment payable to Plaintiff does not exceed Ten Thousand Dollars (\$10,000.00).

- a. Any Service Payment approved by the Court shall be paid by the Class Administrator out of the Gross Settlement Amount to Plaintiff within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount. Any Service Payment paid to Plaintiff shall be reported on an IRS Form 1099 (*i.e.*, as "Other Income") and the Settlement Administrator shall issue an IRS Form 1099-MISC to Plaintiff for such amount. Plaintiff agrees that he alone is responsible for the tax consequences, including any penalties and interest, relating to the payment of any Service Payment.

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- b. If the Court awards less than Ten Thousand Dollars (\$10,000.00) as a Service Payment, the remainder will be added back to the Net Settlement Amount.

F. Neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fee Award, Attorneys' Costs Award, Service Payment, Settlement Administrator's Fees, or Settlement Shares (as defined in Section I(Y)) shall constitute grounds for cancellation or termination of this Agreement.

VI. Settlement Administration.

A. Settlement Notice. The Parties, subject to Court Approval, agree to the following procedures for giving notice of this Settlement to the Allegedly Aggrieved Employees:

- a. Within twenty-one (21) calendar days of Approval or on such date otherwise ordered by the Court, Defendant shall provide to the Settlement Administrator an electronic list that includes the following information for each Allegedly Aggrieved Employee: their first and last name, last known mailing address, Social Security Number, and the number of Applicable Pay Periods. The Settlement Administrator shall not share this information with anyone, including but not limited to Plaintiff and Plaintiff's Counsel. After delivery of the information set forth in this Paragraph to the Settlement Administrator, the Settlement Administrator shall obtain updates, if any, to the last known mailing addresses using information reasonably available from the National Change of Address database maintained by the United States Postal Service and such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated mailing addresses, if any.
- b. The Settlement Administrator shall send a copy of the notice explaining the Settlement (**Exhibit A**) ("Settlement Notice") and the Allegedly Aggrieved Employee's Settlement Share to all persons shown by Defendant's records to be Allegedly Aggrieved Employees, via First Class U.S. Mail, no later than fifteen (15) calendar days following receipt of the information described in paragraph VI(A)(a) of this Agreement.
- c. The Settlement Administrator shall perform a single skip trace using an industry accepted source such as Accurant and using information identifying the Allegedly Aggrieved Employee, as necessary, to conduct an address update on any Settlement Notice described in section VI(A)(b) returned as undeliverable to the Settlement Administrator. The Settlement Administrator shall re-mail all Settlement Notices to new addresses identified by Skip Tracing within three (3) business days of obtaining such new addresses.

- d. Any Settlement Notices returned to the Settlement Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail.
- e. The Settlement Administrator shall keep Defendant's Counsel and Plaintiff's Counsel apprised of the status of distribution of the Settlement Notice and Settlement Shares to the Allegedly Aggrieved Employees.

B. Net Employee Fund and Settlement Shares. The Settlement Administrator shall have sole authority for determining the Net Employee Fund and Settlement Share to each Allegedly Aggrieved Employee.

- a. For purposes of calculating the Net Employee Fund, the Settlement Administrator shall deduct the actual Settlement Administration Costs, the actual Service Payment, if any, the actual Attorneys' Fee Award, if any, the actual Attorneys' Costs Award, if any, and the LWDA Payment that were approved by the Court from the Gross Settlement Amount.
- b. The Settlement Share to each Allegedly Aggrieved Employee shall be determined by the Settlement Administrator dividing the Net Employee Fund by the total number of Applicable Pay Periods, and then multiplying that amount by the Applicable Pay Periods attributed to the individual Allegedly Aggrieved Employee.
- c. Any check issued to any Allegedly Aggrieved Employee shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of its issuance. Upon the expiration of the one hundred eighty (180) calendar day deadline, the funds from each uncashed check shall be forwarded to the State of California Controller's Office's Unclaimed Property Fund in the name of the Allegedly Aggrieved Employee who did not cash his/her respective Settlement Share check.

C. The Settlement Administrator shall be responsible for at least the following:

- a. Receiving, tracking, and organizing the Allegedly Aggrieved Employees' information provided by Defendant;
- b. Following up with Defendant with any questions about the Allegedly Aggrieved Employees' information provided;
- c. Printing and mailing to the Allegedly Aggrieved Employees the Settlement Notice approved by the Court;
- d. Performing address updates and verifications prior to the first mailing of the Settlement Notice;

- e. Performing at least a single Skip Trace address follow up on any returned mail;
- f. Resolving any issues that may arise concerning whether an individual is an Allegedly Aggrieved Employee and/or the number of Applicable Pay Periods at issue with regard to each Allegedly Aggrieved Employee;
- g. Consulting with counsel for the Parties concerning any relevant issue, including (without limitation) distribution of the Settlement Notice and payment of Settlement Shares;
- h. Calculating the LWDA Payment, Net Employee Fund, and Settlement Shares, consistent with the terms of this Agreement and any order of the Court;
- i. Distributing, by mail or otherwise, and paying Settlement Shares, and the LWDA Payment, any Attorneys' Fee Award, any Attorneys' Costs Award, any Service Payment, and Settlement Administration Costs as may be ordered by the Court or as otherwise required by this Agreement;
- j. All tasks assigned to the Settlement Administrator under this Agreement, which, if not completed properly or accurately, shall subject the Settlement Administrator to liability for any costs, fines, losses, or expenses or other amounts incurred by the Parties; and
- k. Such other tasks as counsel for the Parties agree or the Court orders the Settlement Administrator to perform.

D. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

E. The Settlement Administrator is not an agent of Plaintiff, Plaintiff's Counsel, Defendant, or Defendant's Counsel.

F. The Settlement Administrator is not authorized by this Agreement or otherwise to act on behalf of Plaintiff, Plaintiff's Counsel, Defendant, or Defendant's Counsel except as set forth herein.

G. The Parties agree to cooperate in the Settlement administration process and to use commercially reasonable efforts to carry out the terms of this Settlement and to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

H. Within thirty (30) calendar days after the 180-day expiration period for the Settlement Shares, the Settlement Administrator shall provide counsel for all Parties with a written report listing the total amount of the Net Employee Fund paid; the number of checks issued to the Allegedly Aggrieved Employees; the number and total dollar amount of such checks that were negotiated and cashed; the number and total dollar amount of checks issued that were not negotiated and cashed, if any; the amount of the LWDA Payment paid to the LWDA; the amount of Settlement Administration Costs; and the amount of the Net Employee Fund paid or to be paid to the State of California Controller's Office's Unclaimed Property Fund, if any.

I. The Settlement Administration Costs incurred by, or at the direction of, the Settlement Administrator in connection with the administration and implementation of this Agreement in an amount not exceeding Four Thousand Five Hundred Dollars (\$4,500.00), absent prior approval by the Court, shall be paid out of the Gross Settlement Amount within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

J. Upon completion of the implementation and administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to counsel for all Parties.

K. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on the mailings, distribution, or Settlement Share payment made in accordance with this Agreement or any order of the Court.

VII. Release and Waivers.

A. Except with respect to the obligations arising out of the Settlement and in consideration of the payments and terms set forth above, Plaintiff, the Allegedly Aggrieved Employees and the LWDA expressly, to the fullest extent permitted by law, fully and forever compromise, release, resolve, relinquish, and discharge the Released Parties from the Released Claims (as defined in this Agreement). To the fullest extent permitted by law, Plaintiff agrees not to commence or participate in any claim, demand, grievance, action, or other proceeding against the Released Parties based upon the claims being released.

B. Except with respect to the obligations arising out of the Settlement, the Released Claims of Plaintiff, the Allegedly Aggrieved Employees, and the LWDA against the Released Parties are fully and forever compromised, released, resolved, relinquished, and discharged through the PAGA Period. For the avoidance of doubt, as of the entry of the Approval Order, Plaintiff, the Allegedly Aggrieved Employees, and the LWDA are bound by the settlement of the Released Claims.

C. Plaintiff's General Release. Upon approval by the Court of this Agreement, Plaintiff shall fully release and forever discharge the Released Parties for any and all causes of action, obligations, costs, expenses, damages, claims, liabilities, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or otherwise, of any kind whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the

beginning of time to the date that Plaintiff signs this Agreement, including but not limited to any claims or causes of action which were, or could have been asserted in the Action and/or arising out of his employment, if any, with the Released Parties.

- a. Plaintiff specifically waives the benefit of the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- b. Notwithstanding the provisions of Section 1542, Plaintiff expressly acknowledges that this Agreement is also intended to include in its effect, without limitation, all claims which Plaintiff does not know or suspect to exist in his favor at the time of the execution hereof, and that this Agreement contemplates the extinguishment of any such claim.

VIII. Miscellaneous.

A. Confidentiality. The Parties, Plaintiff's Counsel, and Defendant's Counsel agree that the existence and contents of this Settlement and all related settlement communications will remain confidential until the Motion for Court Approval of Settlement is filed with the Court. This provision shall not prevent the disclosure of such information prior to the filing of the Motion for Court Approval of Settlement with the Court to (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, and any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Settlement Administrator as may reasonably be required to effectuate this Settlement, and/or as otherwise required to comply with any applicable law or regulation; (2) any person or entity to whom the Parties agree in writing disclosure must be made to effectuate this Settlement, and/or (3) by Defendant or any of the Released Parties as necessary for any reasonable commercial purpose.

B. Plaintiff and Plaintiff's Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties, that they not be the subject of public comment, and that they not be publicly disclosed or used by Plaintiff or Plaintiff's Counsel in any way in the Action should it not settle or in any other proceeding.

C. Prohibition on Press Releases. Plaintiff and Plaintiff's Counsel agree they will not contact the press, issue any press releases, give any interviews, or comment upon this Settlement to any person in any way other than as specifically provided in this Agreement. Plaintiff and Plaintiff's Counsel agree that, if approached by any person other than Allegedly Aggrieved Employees, they will say only that the Action settled. Upon entry of the Approval Order, Plaintiff's Counsel may identify the Settlement and/or the Approval Order and shall

comply with all confidentiality provisions of this Agreement. Plaintiff and Plaintiff's Counsel agree not to publicize the existence or terms of this Settlement to third parties, which includes making no mention of it on Plaintiff's Counsel's website or on social media, except to apply for and obtain Court approval of this Settlement and to comply with reporting requirements under PAGA, Labor Code section 2699 et seq.

D. Confidential Materials. The Parties agree to cooperate and to work with one another to protect any confidential materials exchanged in connection with mediation or otherwise produced in the Action. This includes, but is not limited to, stipulating that any confidential information submitted to any court in the Action will be sealed.

E. Agreement to Cooperate. All of the Parties, their successors and assigns, and their attorneys agree to cooperate with one another in seeking Court Approval of this Settlement and to effectuate this Agreement.

F. Discovery. The Parties agree that all pending discovery requests are withdrawn.

G. Choice of Law/Venue. In determining the rights of the Parties hereto, this Agreement shall be governed by, construed, and interpreted in accordance with the internal laws of the State of California, without regard to the conflict of laws principles thereof. In addition, any action brought to enforce the provisions of this Agreement shall be commenced, prosecuted, and defended exclusively in the Superior Court of the State of California, County of San Mateo.

H. Warranties. Each signatory to this Agreement hereby warrants that (s)he has the authority to execute this Agreement and thereby bind the respective Party. Plaintiff warrants and represents that he is standing in the shoes of the LWDA with respect to the Released Claims and has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

I. Binding Effect of the Agreement. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns.

J. Integration Clause. This Agreement and its attachments constitute the entire agreement of the Parties with respect to the matters discussed herein, and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement or its incorporated **Exhibit A**.

K. Modifications in Writing Only. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the Parties to this Agreement or their counsel. Non-material amendments or modifications to this Agreement may be made in writing between Plaintiff's Counsel and Defendant's Counsel.

L. Withdrawal from Agreement. If the Court indicates, prior to the Approval Order, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) calendar days after the Court indicates that the Settlement will not be approved unless certain changes are made, absent a written agreement among the Parties to continue discussions, then Plaintiff or Defendant may terminate and withdraw from this Agreement consistent with Paragraphs III(A)(e) and VIII(M) of this Agreement but prior to withdrawing must first engage in a mediation with an agreed-upon mediator.

M. Extensions. Without further order of the Court, Plaintiff's Counsel and Defendant's Counsel may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement or the Approval Order.

N. Headings. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

O. Notice. All notices or other communications given pursuant to this Agreement will be in writing and addressed to:

Plaintiff's Counsel:

Larry W. Lee (lwlee@diversitylaw.com)
Max W. Gavron (mgavron@diversitylaw.com)
Kwanporn "Mai" Tulyathan (ktulyathan@diversitylaw.com)
Christine S. Lee (christine@diversitylaw.com)
Diversity Law Group
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

William L. Marder (bill@polarislawgroup.com)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 4214

Defendant's Counsel:

Soojin Kang (skang@ohaganmeyer.com)
O'Hagan Meyer
550 S. Hope Street, Suite 2400
Los Angeles, CA 90071
Telephone: (213) 647-0086

P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and this Agreement is effective upon execution of at least one counterpart by each party to this Agreement.

Q. No Admissions. If this Agreement does not become effective or is cancelled or terminated for any reason, it shall be deemed negotiations for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Action or any proceedings between the Parties. Defendant denies all of the claims, contentions, and each and every allegation made by Plaintiff in the Action and expressly disclaims that any action, omission, or alleged wrongdoing by it, including entering into this Agreement or Defendant paying the amounts provided for herein, constitutes, acknowledges, or supports the existence or finding of a violation of the California Labor Code or gives rise to the imposition of any civil or statutory penalties under PAGA or otherwise. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever.

R. No Tax Advice. Neither Plaintiff's Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall it be relied upon as such.

S. Terminology and Construction. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa.

T. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

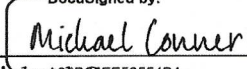
U. Disputes Regarding Language of Settlement Agreement. If the Parties have a dispute with regard to the language of the Agreement, the Parties agree to attempt to informally resolve the dispute by engaging the Court to mediate such dispute.

V. Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provisions of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

W. Agreement Drafted by All Parties. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it, and the Parties agree that any rule which construes ambiguities against the drafter shall have no force or effect.

PLAINTIFF MICHAEL CONNER

RED WING BRANDS OF AMERICA, INC.

DocuSigned by:

Michael Conner


By: Sarah Erickson
EVP & General Counsel

Its: _____

APPROVED AS TO FORM:

DIVERSITY LAW GROUP



Larry W. Lee
Max W. Gavron
Kwanporn “Mai” Tulyathan
Christine S. Lee
Plaintiff’s Counsel

O’HAGAN MEYER



Soojin Kang
Defendant’s Counsel

EXHIBIT A

**NOTICE OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AND RELEASE OF CLAIMS**

I. Notice of Settlement.

On [REDACTED], the Superior Court for the County of San Mateo approved a settlement of claims brought pursuant to the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”), in the matter entitled *Michael Conner, as an individual and on behalf of all others similarly situated v. Red Wing Brands of America, Inc., a Minnesota corporation; and Does 1 through 50, inclusive*, Superior Court of California, County of San Mateo, case number 22-CIV-03830 (the “Action”).

The Action was brought by Plaintiff Michael Conner (“Plaintiff”) on behalf of himself, allegedly aggrieved employees, and the State of California. Plaintiff alleged that Defendant Red Wing Brands of America, Inc. (“Red Wing”) failed to pay meal period premiums and sick pay at the regular rate of pay, in violation of California Labor Code sections 201-204, 226, 226.7, 246, 512, and 2699, *et seq.*

Red Wing expressly denies any liability and denies all claims, contentions, and each and every allegation made by Plaintiff. The Court has not made any determination as to whether the claims advanced by Plaintiff on behalf of himself and allegedly aggrieved employees, or the defenses raised by Red Wing, have any merit.

After arm’s length negotiations, Plaintiff and Red Wing (collectively as the “Parties”) agreed to resolve the Action with no decision or admission of who is right or wrong, pursuant to the terms and conditions set forth in a written Settlement Agreement (the “Settlement”).

The Gross Settlement Amount is One Hundred Fifty-Five Thousand Dollars (\$155,000.00) apportioned as follows: (1) Settlement Administration Costs (\$ [REDACTED].00); (2) a Service Payment (\$ [REDACTED].00) to Plaintiff; (3) an Attorneys’ Fee Award (\$ [REDACTED].00) to Plaintiff’s Counsel; (4) an Attorneys’ Costs Award (\$ [REDACTED].00) to Plaintiff’s Counsel; (5) the Net Employee Fund distributed to the Allegedly Aggrieved Employees; and (6) the Labor & Workforce Development Agency (“LWDA”) Payment.

By agreeing to resolve the Action, the parties avoid the risks and costs of a trial. The Settlement does not constitute an admission of the accuracy of any allegation made by Plaintiff or Plaintiff’s counsel or the strengths and weaknesses or Red Wing’s defenses. Furthermore, this Notice is not an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

You are receiving this Notice because you are in the group of employees referred to as the “Allegedly Aggrieved Employees,” which is defined as all non-exempt employees employed by Red Wing in the State of California during the PAGA Period who received a meal period premium and/or sick pay wages and non-discretionary remuneration during the same pay period. The PAGA Period is the time period of September 14, 2021, through July 15, 2023. Allegedly Aggrieved Employees are entitled to share in the Settlement funds and will be bound by a release of claims, as more fully described below.

II. Settlement Shares.

The Settlement Share to each Allegedly Aggrieved Employee was calculated on a pro rata basis

based on the Net Employee Fund divided by the total number of pay periods during which Allegedly Aggrieved Employees were paid meal period premiums and/or sick pay wages and non-discretionary remuneration during the PAGA Period. Because this is an action under the PAGA, 75% of the net recovery is distributed to the LWDA, and the remaining 25%, or the Net Employee Fund, is distributed to the Allegedly Aggrieved Employees.

Settlement checks to the Allegedly Aggrieved Employees will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance. Funds from any checks not deposited or cashed within that time will be forwarded to the State of California Controller's Office's Unclaimed Property Fund in the name of the respective Allegedly Aggrieved Employees where that individual may obtain them at a later date, if so desired.

III. Release.

Pursuant to the Court's Order dated [REDACTED], the Allegedly Aggrieved Employees are bound by the settlement of the Released Claims as to the Released Parties.

The Released Parties are (a) Red Wing and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of Red Wing; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present, or future employees, officers, directors, affiliates, partners, joint venturers, co-venturers, licensors, licensees, franchisors, franchisees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, their, or its capacity as such.

The Released Claims are all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have reasonably been pled based on the factual allegations contained in the operative Complaint or any amendments thereto and notice(s) filed with the LWDA, including but not limited to claims brought under the Private Attorneys General Act ("PAGA") for civil penalties premised on the violation of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 246, and 512, and claims under Labor Code Sections 226.3 and 1021.5.

The Released Claims of Plaintiff and the Allegedly Aggrieved Employees against the Released Parties are fully and forever compromised, released, resolved, relinquished, and discharged through the PAGA Period, whether or not Allegedly Aggrieved Employees cash their checks within the 180-day window.

IV. Settlement Administrator.

If you have any questions about the Settlement, you may contact the Settlement Administrator, [REDACTED], at [REDACTED]. Pleadings and other records relevant to the claims can be found at the Superior Court for the County of San Mateo, located at Hall of Justice, 400 County Center, Redwood City, California 94063. They can also be accessed online through the Register of Actions located on Court's website at <https://odyportal-ext.sanmateocourt.org/Portal-External/Home/Dashboard/29> and using the case number 22-CIV-03830.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.

EXHIBIT C

Michael Conner v. Red Wing Brands
Time and Task Chart for Max W. Gavron

Hours	Description of Work
10.5	Factual investigation, review of file and client documents, conduct investigation re: Defendants' corporate status and entities
2.5	Analyze and review prior settlement agreement and docket from case to determine impact on case, if any.
1.4	Draft PAGA letter to send to LWDA and employer; further review and revise same
2.4	Draft complaint, review and further revise said complaint
.5	Telephonic and meet and confer with opposing counsel for case management conference
2.1	Meet and confer with defense counsel to address applicability of arbitration agreement; analyze and review same; consider strategy moving forward.
1.3	Draft and revise first amended complaint alleging PAGA claim only considering meet and confer re arbitration agreement; confer with co-counsel re same.
2.9	Draft and revise joint statements in advance of case management conferences; meet and confer with defense counsel re same; Analyze and review Court's CMOs.
1.7	Numerous written and telephonic meet and confer communications with Defendants' counsel regarding potential settlement
1.5	Draft and revise data request to Defendant requesting information needed to analyze potential settlement; confer with co-counsel re same.
2.6	Review informal data produced by Defendants for purposes of settlement; conduct damages analysis for purposes of settlement
1.9	Meet and confer with Defendant regarding whether alleged Labor Code violations were remedied to assess settlement position and close of PAGA period.
6.9	Draft and revise stipulation of settlement; confer with opposing counsel regarding the terms therein; further review and revise stipulation
.5	Correspondence with settlement admin regarding obtaining bid for administration of settlement
1.5	Draft notice to be sent to PAGA employees re: settlement; confer with opposing counsel regarding same; further review and revise same
7.9	Draft motion for approval of PAGA settlement; declaration and proposed order in support of same; confer with opposing counsel regarding motion; further review and revise same
48.1	TOTAL HOURS

EXHIBIT D

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DIVERSITY LAW GROUP
Slip Listing

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Selection Criteria

Slip.Classification Open
Client (hand select) Include: Conner, Michael v. Red Wing
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
73000	EXP	Mariana Becerra	1	75.00	75.00
9/14/2022		Court fees			
WIP		Conner, Michael v. Red Wing			
LWDA					
73027	EXP	Erika Mejia	1	1488.85	1488.85
9/20/2022		Court fees			
WIP		Conner, Michael v. Red Wing			
Odyssey - Complaint					
73312	EXP	Erika Mejia	1	94.60	94.60
9/26/2022		Atty Service			
WIP		Conner, Michael v. Red Wing			
Attorney Service - Complaint Service					
73179	EXP	Erika Mejia	1	3.62	3.62
10/5/2022		Court fees			
WIP		Conner, Michael v. Red Wing			
Odyssey - POS of Summons					
73234	EXP	Olympia	1	3.62	3.62
10/7/2022		Court fees			
WIP		Conner, Michael v. Red Wing			
Odyssey - Notice of CMO 1					
73682	EXP	Olympia	13	0.25	3.25
10/31/2022		Photocopies			
WIP		Conner, Michael v. Red Wing			
Photocopies					
73683	EXP	Olympia	1	8.63	8.63
10/31/2022		Postage			
WIP		Conner, Michael v. Red Wing			
Postage					
73629	EXP	Erika Mejia	1	3.62	3.62
11/28/2022		Court fees			
WIP		Conner, Michael v. Red Wing			
Odyssey - FAC					

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DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
73945 EXP 12/28/2022 WIP Odyssey - Joint CMS	Olympia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
74045 EXP 1/10/2023 WIP Odyssey - CMO #2	Erika Mejia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
75037 EXP 5/5/2023 WIP Odyssey - Joint CMS	Erika Mejia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
76215 EXP 9/21/2023 WIP Odyssey - Joint CMS	Olympia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
77213 EXP 1/11/2024 WIP Odyssey - Joint CMS	Erika Mejia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
78283 EXP 5/14/2024 WIP Odyssey - Stip re Briefing Schedule	Olympia Court fees Conner, Michael v. Red Wing	1	24.32	24.32
78311 EXP 5/22/2024 WIP Odyssey - NOE	Olympia Court fees Conner, Michael v. Red Wing	1	3.62	3.62
78406 EXP 6/5/2024 WIP Est Filing Fees	Christine S. Lee Court fees Conner, Michael v. Red Wing	1	250.00	250.00
Grand Total	Billable Unbillable Total	0.00 0.00 0.00		1977.23 0.00 1977.23

EXHIBIT E