

(Attorneys on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

ROBERT CHERY, an individual, in his  
representative capacity on behalf of the State  
of California and fellow Aggrieved  
Employees,

Plaintiffs,

v.

WARBY PARKER INC. f/k/a JAND, INC., a  
Delaware corporation; WARBY PARKER  
RETAIL, INC., a Delaware corporation; and  
DOES 1-50, Inclusive,

Defendants.

CINDY PHAM, an individual, on behalf of  
herself and all other similarly-situated  
employees,

Plaintiffs,

v.

WARBY PARKER INC., a Delaware  
Corporation; WARBY PARKER RETAIL,  
INC., a Delaware Corporation; and DOES 1  
through 50, inclusive,

Defendants.

SAVANNA JACOBSEN, an individual; and  
ZAVEN McCARTY an individual, on behalf  
of themselves and all other aggrieved  
employees,

Plaintiffs,

v.

WARBY PARKER INC., a Delaware  
corporation; WARBY PARKER RETAIL,  
INC., a Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

CASE NO. 23CV417693

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

ASSIGNED FOR ALL PURPOSES TO:  
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DEPARTMENT 19

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## **CLASS ACTION SETTLEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is made and entered into by, between, and among Plaintiffs Cindy Pham, Robert Chery, Savanna Jacobsen, and Zaven McCarty (“Plaintiffs”), on behalf of themselves, the Settlement Class, as defined below, the State of California, and the Allegedly Aggrieved Employees, as defined below, on the one hand, and Defendants Warby Parker Inc. and Warby Parker Retail, Inc. (collectively, “Warby Parker” or “Defendants”) on the other.

Plaintiffs and Warby Parker (collectively, the “Parties”) enter into this Agreement to effectuate a full and final settlement and preclusive judgment resolving all claims brought or that could have been brought against Warby Parker in *Pham v. Warby Parker Inc., et al.* (N.D. Cal. Case No. 5:23-cv-01184-NC); *Chery v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV417693); and *Jacobsen et al. v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV421588) (collectively, the “Actions”), and all claims based on or reasonably related thereto. This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

### **I. RECITALS**

#### **A. *Pham Action***

WHEREAS, on March 13, 2023, Plaintiff Cindy Pham filed a putative class action in Santa Clara County Superior Court against Warby Parker alleging violations of the Labor Code, and Warby Parker timely removed the action to the United States District Court for the Northern District of California on April 19, 2023, *Pham v. Warby Parker Inc., et al.* (N.D. Cal. Case No. 5:23-cv-01184-NC) (“*Pham Action*”);

WHEREAS, on June 9, 2023, Plaintiff Pham filed her First Amended Complaint;

WHEREAS, on June 20, 2023, following a stipulation by Warby Parker and Plaintiff Pham, the Northern District of California entered an order dismissing Plaintiff Pham’s section 226 claim and extending Warby Parker’s deadline to file an answer to Plaintiff Pham’s First Amended Complaint;

WHEREAS, on July 6, 2023, the Northern District of California entered an order granting Warby Parker’s and Plaintiff Pham’s Joint Stipulation Regarding Continuance of Court Deadlines

1 Pending Mediation and ordered the parties file a joint status report by December 26, 2023;

2 WHEREAS, on December 11, 2023, the Northern District of California entered an order  
3 granting Warby Parker's and Plaintiff Pham's Second Joint Stipulation Regarding Continuance of  
4 Court Deadlines Pending Mediation and ordered the parties file a joint status report by no later than  
5 May 7, 2024;

6 WHEREAS, on May 7, 2024, the parties filed a Joint Status Report and Notice of Settlement;  
7 and

8 WHEREAS, on May 7, 2024, the Northern District of California entered an order granting the  
9 parties' joint request to continue the case management conference to July 31, 2024, and ordered the  
10 parties to file a status report no later than July 17, 2024.

11 **B. Chery Action**

12 WHEREAS, on June 16, 2023, Plaintiff Robert Chery filed a PAGA Action in Santa Clara  
13 Superior Court against Warby Parker seeking penalties pursuant to the Private Attorneys General Act  
14 ("PAGA") for various alleged violations of the Labor Code, *Chery v. Warby Parker Inc., et al.* (Santa  
15 Clara Sup. Ct. Case No. 23CV417693) ("*Chery Action*");

16 WHEREAS, on September 18, 2023, Warby Parker and Plaintiff Chery filed a Joint Stipulation  
17 to Continue Case Management Conference and Stay Pending Mediation in the *Chery Action* and on  
18 September 21, 2023, the Santa Clara Superior Court granted the Joint Stipulation and ordered the  
19 parties to file a status report no later than December 21, 2023;

20 WHEREAS, on December 19, 2023, the Santa Clara Superior Court entered an order granting  
21 Warby Parker's and Plaintiff Chery's Second Joint Stipulation to Continue Case Management  
22 Conference and Stay Pending Mediation and ordered the parties to file a status report no later than  
23 May 7, 2024;

24 WHEREAS, on May 7, 2024, Warby Parker and Plaintiff Chery filed a Joint Status Report and  
25 Notice of Settlement; and

26 WHEREAS, on May 7, 2024, the Santa Clara Superior Court entered an order rescheduling the  
27 case management conference to October 2, 2024.

1     **C.     *Jacobsen Action***

2           WHEREAS, on August 24, 2023, Plaintiffs Savanna Jacobsen and Zaven McCarty filed a  
3     PAGA Action in Santa Clara Superior Court against Warby Parker seeking penalties pursuant to the  
4     Private Attorneys General Act for various alleged violations of the Labor Code, *Jacobsen et al. v.*  
5     *Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV421588) (“*Jacobsen Action*”);

6           WHEREAS, on October 27, 2023, Plaintiffs Jacobsen and McCarty filed their First Amended  
7     Complaint;

8           WHEREAS, on December 12, 2023, the Santa Clara Superior Court granted the parties’ Joint  
9     Stipulation to Continue Case Management Conference and Stay Pending Mediation and ordered the  
10    parties to file a joint status report no later than May 7, 2024;

11          WHEREAS, on May 7, 2024, the parties filed a Joint Status Report and Notice of Settlement;  
12    and

13          WHEREAS, on May 7, 2024, the Santa Clara Superior Court entered an order rescheduling the  
14    case management conference to October 2, 2024.

15    **D.     Mediation and Resolution**

16          WHEREAS, on April 23, 2024, Plaintiffs and Warby Parker attended a global, virtual mediation  
17    session with experienced professional mediator Hon. Angela Bradstreet (Ret.), and, in preparation for  
18    the mediation, engaged in extensive discovery, exchanging information, documents, and voluminous  
19    data, which enabled a thorough evaluation of the claims, and the likely outcomes, risks, and expense  
20    of pursuing litigation;

21          WHEREAS, following the mediation, a mediator’s proposal was issued that would resolve all  
22    of the claims pled in the Actions;

23          WHEREAS, on April 25, 2024, the Parties accepted the proposal, agreeing to a global  
24    settlement and release of the Actions, and began negotiating the terms of a Memorandum of  
25    Understanding;

26          WHEREAS, the Parties desire to fully, finally, and forever settle, compromise, and discharge  
27    all disputes and claims that exist between them arising from the factual allegations that underlie the  
28    Actions concerning any and all claims asserted therein, including the alleged: failure to provide

compliant meal periods; failure to provide compliant rest breaks; failure to pay all wages owed, including overtime; failure to properly pay wages at the regular rate of pay, including overtime, double-time, meal period premiums, and sick pay; failure to provide written notice of paid sick leave; failure to reimburse necessary business expenses; failure to provide accurate wage statements; failure to timely pay wages, including at termination; violations of the UCL, California Business & Professions Code section 17200 *et seq.*; and claims for PAGA penalties under Labor Code section 2698 *et seq.*, including but not limited to for derivative claims. To achieve a full and complete release of Warby Parker (and the “Released Parties” as defined in this Agreement) of such disputes and claims, the Plaintiffs and Participating Settlement Class Members, as defined in this Agreement (which include any legal heirs and/or successors-in-interest of all Participating Settlement Class Members), through execution of the Agreement, acknowledge that this Settlement Agreement is intended to include in its effect the entirety of the Released Claims, as more fully described in Paragraphs 26, and 27, 60 and 78 of this Agreement; and

WHEREAS, on June 6, 2024, the Memorandum of Understanding was fully executed and the Parties continued to negotiate the terms of this Settlement Agreement and Release, which was finalized on September 16, 2024.

## II. DEFINITIONS

In addition to the terms defined elsewhere in this Settlement Agreement, capitalized terms used in this Settlement Agreement shall have the meanings set forth below:

1. “Actions” means all of the following court actions: (1) *Pham v. Warby Parker Inc., et al.* (N.D. Cal. Case No. 5:23-cv-01184-NC); (2) *Chery v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV417693); and (3) *Jacobsen et al. v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV421588).

2. “Allegedly Aggrieved Employees” means all current and former non-exempt employees of Warby Parker who worked at Warby Parker retail locations in California from April 12, 2022 through June 24, 2024, which represents sixty (60) days after the Plaintiffs agreed in principle to resolve the Actions.

3. “Attorneys’ Fees and Costs” means attorneys’ fees sought by Class Counsel for

litigation and resolution of the Actions, and all reasonable costs incurred by Class Counsel in the Actions in an amount not to exceed Thirty Thousand Dollars (\$30,000.00). Subject to review and approval by the Court, Class Counsel may request attorneys' fees of not more than one-third (33 1/3%) of the Gross Settlement Fund, or Six Hundred Fifty Thousand Dollars (\$650,000.00) plus reasonable costs and expenses in an amount not to exceed Thirty Thousand Dollars (\$30,000.00), which shall be paid from the Gross Settlement Fund.

4. "Class Counsel" means and includes Matthew J. Matern, Matthew W. Gordon, and Vanessa M. Rodriguez of Matern Law Group, PC; Jean-Claude Lapuyade and Monnett De La Torre of JCL Law Firm, APC; and Shani O. Zakay, Jackland K. Hom, and Julieann Alvarado of Zakay Law Group, APLC.

5. "Class Counsel Award" means any attorneys' fees, expenses and/or costs awarded to Class Counsel by the Court.

6. "Class List" means a complete list of all Settlement Class Members and Allegedly Aggrieved Employees that Warby Parker will diligently and in good faith compile from its records and provide to the Settlement Administrator within twenty (20) calendar days after entry of an order granting Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include (to the extent known) each Class Member's full name; most recent email, mailing address and telephone number contained in Warby Parker's personnel records; Social Security number; dates of employment; information sufficient to calculate the number of workweeks that each Class Member worked during the Class Period and the number of "weeks worked" or "workweeks" that each Allegedly Aggrieved Employee worked during the PAGA Period according to Warby Parker's records; and any other information needed to calculate Individual Settlement Payments.

7. "Class Period" means the period from March 13, 2019 through June 24, 2024, which represents sixty (60) days after the Plaintiffs agreed in principle to resolve the Actions.

8. "Class Representative Enhancement Payments" means the amounts to be paid to Plaintiffs, subject to final approval by the Court, in recognition of their effort and work in prosecuting the Actions on behalf of Settlement Class Members, and for their general release of claims under Civil Code section 1542. Subject to the Court granting final approval of this Settlement Agreement and

subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of Class Representative Enhancement Payments of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Cindy Pham, Robert Chery, Savanna Jacobsen, and Zaven McCarty, for a total of Forty Thousand Dollars (\$40,000.00).

9. “Court” or “Santa Clara Superior Court” means the Superior Court of California for the County of Santa Clara.

10. “Effective Date” means the later of: (i) if no timely objections are filed, or if filed, are withdrawn prior to final approval, the date upon which the Court enters an order granting final approval of the Settlement Agreement; or (ii) if timely objections are filed and not withdrawn, then either five (5) calendar days from the final resolution of any appeals timely filed or the expiration date of the time for filing or noticing any such appeals, provided that the Settlement is finally approved.

11. “Final Approval” means the entry of an order that the Plaintiffs and Warby Parker will jointly seek from the Court, and the entry of which shall reflect the Court’s Judgment finally approving the Settlement Agreement.

12. “Final Approval Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and after the date the Settlement Administrator mails Notice Packets to Settlement Class Members for purposes of: (i) entering Final Approval; (ii) determining whether the Settlement Agreement shall be approved as fair, reasonable, and adequate; and (iii) ruling upon an application by Class Counsel for Attorneys’ Fees and Costs and Plaintiffs’ Class Representative Enhancement Payments.

13. “Funding Date” means twenty (20) business days after the Effective Date.

14. “Gross Settlement Fund” means the non-reversionary amount of One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00), to be paid by Warby Parker in full satisfaction of all Released Claims, which includes all Individual Settlement Payments to Participating Settlement Class Members, Participating Settlement Class Members’ shares of applicable payroll tax payments (including FICA, FUTA, and SDI contributions), the Class Representative Enhancement Payments to Plaintiffs, the PAGA Settlement Amount for release of all Private Attorneys’ General Act claims, Attorneys’ Fees and Costs, and Settlement Administration Costs. In addition to the amount provided



1 as part of the Gross Settlement Fund, Warby Parker agrees to pay the employer's share of applicable  
2 payroll tax payments ("Employer's Payroll Tax Payments"). Other than the Employer's Payroll Tax  
3 Payments, which shall be calculated by the Settlement Administrator and determined based on the  
4 Individual Settlement Payments to Participating Class Members dispersed as W-2 payments, in no  
5 event will Warby Parker be liable for more than the Gross Settlement Fund set forth in this paragraph.  
6 None of the Gross Settlement Fund shall revert to Warby Parker.

7 15. "Individual Settlement Payment" means each Participating Settlement Class Member's  
8 respective share of the Net Settlement Amount.

9 16. "Individual PAGA Payment" means each Allegedly Aggrieved Employee's respective  
10 share of the 25% of the PAGA Settlement Amount allocated to Allegedly Aggrieved Employees.

11 17. "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining  
12 after deducting the Class Representative Enhancement Payments, the Class Counsel Award, Settlement  
13 Administration Costs, and PAGA Settlement Amount. The entirety of the Net Settlement Amount will  
14 be distributed to Participating Class Members pro rata, on a per "weeks worked" or "workweek" basis.  
15 There will be no reversion of the Net Settlement Amount to Warby Parker.

16 18. "Notice of Objection" means a Settlement Class Member's valid and timely written  
17 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the  
18 objector's full name, signature, address, and telephone number; (ii) a written statement of all grounds  
19 for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs,  
20 or other documents upon which the objection is based; and (iv) a statement whether the objector intends  
21 to appear at the Fairness Hearing. Any Settlement Class Member who does not submit a timely written  
22 objection to the Settlement may still object in person at the Fairness Hearing, or retain an attorney to  
23 object on his or her behalf at the Fairness Hearing. However, any Settlement Class Member who fails  
24 to otherwise comply with the specific and technical requirements of this paragraph, and does not  
25 otherwise object at the Fairness Hearing, will be foreclosed from objecting to the Settlement and  
26 seeking any adjudication or review of the Settlement, by appeal or otherwise.

27 19. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form  
28 attached as **Exhibit A**.

20. “PAGA Settlement Amount” means the amount that the Parties agree to pay to the Allegedly Aggrieved Employees and the Labor and Workforce Development Agency (“LWDA”) in connection with resolution of the PAGA claims in the Actions. The Parties agree that One Hundred Thirty Thousand Dollars (\$130,000.00) of the Gross Settlement Fund will be allocated to the resolution of Allegedly Aggrieved Employees’ claims arising under PAGA. As required by PAGA, Seventy-Five Percent (75%), or Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00), of the PAGA Settlement Amount will be paid to the California LWDA (“LWDA Payment”), and Twenty-Five Percent (25%), or Thirty-Two Thousand Five Hundred Dollars (\$32,500.00), of the PAGA Settlement Amount will be distributed to Allegedly Aggrieved Employees on a pro rata basis based on their respective number of “weeks worked” or workweeks between April 12, 2022 and June 24, 2024 (“PAGA Period”).

21. “Participating Settlement Class Members” means all Settlement Class Members who do not submit timely and valid Requests for Exclusion.

22. “Parties” means Plaintiffs and Warby Parker, collectively.

23. “Plaintiffs” means Plaintiffs Cindy Pham, Robert Chery, Savanna Jacobsen, and Zaven McCarty.

24. “Preliminary Approval” means the Court order granting preliminary approval of this Settlement Agreement.

25. “Qualified Settlement Fund” means a fund, account, or trust satisfying the requirements of 26 C.F.R. § 1.468B-1, established by the Settlement Administrator for the purpose of distributing the Gross Settlement Fund according to the terms of this Settlement Agreement.

26. “Released Class Claims” means, subject to Paragraph 60, all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties (including but not limited to waiting time penalties and all other penalties available under the California Labor Code), costs, expenses, attorneys’ fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity, or otherwise, during the Class Period, known or unknown, that were or could have reasonably been alleged based upon the facts pleaded in the Actions, including: (a) all claims for wage statement violations (Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001);

(b) all claims for unpaid minimum wages (Labor Code §§ 1194, 1197, 1197.1, and IWC Wage Order No. 7-2001); (c) all claims for unpaid overtime (Labor Code §§ 510, 1194, 1198, and IWC Wage Order 4, and IWC Wage Order 7-2001); (d) all claims for failure to pay meal period and rest break premium wages at the regular rate of pay (Labor Code §§ 226.7, 510, 512, 1194, 1197, and IWC Wage Order No. 7-2001, §§ 11, 12); (e) all claims for failure to indemnify employees for necessary expenditures incurred in discharge of duties (Labor Code § 2802); (f) all claims for the failure to timely pay wages during employment (Labor Code §§ 204, 210); (g) all claims for the failure to timely pay wages upon termination, failure to pay waiting time penalties, and failure to pay all wages due to discharged and quitting employees (Labor Code §§ 201, 202 and 203); (h) failure to pay sick pay at the regular rate of pay (Labor Code § 246); (i) failure to provide written notice of paid sick leave (Labor Code § 246); and (j) all claims asserted through California Business & Professions Code section 17200 *et seq.* arising out of the aforementioned claims during the Class Period.

27. “Released PAGA Claims” means all claims for PAGA penalties, costs, expenses, attorneys’ fees, during the PAGA Period, that were or could have reasonably been alleged based upon the facts pleaded in the Actions and the PAGA claim notices that Plaintiffs Chery, Jacobsen, and McCarty provided to the LWDA prior to commencing the Actions asserted through California Labor Code section 2698 *et seq.* (PAGA), including any and all claims described in the Released Class Claims, including any derivative claims, arising during the PAGA Period. Plaintiffs’ LWDA notices are attached as **Exhibit B** to this Settlement Agreement.

28. “Released Parties” means Warby Parker Inc., Warby Parker Retail, Inc., JAND, Inc., and any of their former and present parents, subsidiaries, holding companies, investors, sister and affiliated companies, divisions, and other related entities, as well as their successors, predecessors, shareholders, officers, directors, partners, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans, and representatives, both individually and in their official capacities, past or present, as well as all persons acting by, through, under, or in concert with any of these persons or entities, including, but not limited to, entities holding ownership interests in Warby Parker Inc. or Warby Parker Retail, Inc. stores in California.

29. “Request for Exclusion” means a timely letter submitted by a Settlement Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name, address, and telephone number of the Settlement Class Member requesting exclusion; (ii) be signed by the Settlement Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Settlement Class Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

30. “Response Deadline” means the deadline by which Settlement Class Members must postmark or fax to the Settlement Administrator Requests for Exclusion, Notices of Objection, or disputes to workweeks. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

31. “Settlement Administration Costs” means the reasonable fees and expenses payable from the Gross Settlement Fund to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking forms for this Settlement, calculating estimated amounts per Settlement Class Member, tax reporting, distributing the LWDA Payment, Gross Settlement Fund and Class Counsel Award, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, as requested by the Parties. The Parties have agreed to allocate up to Fifteen Thousand Dollars (\$15,000.00) to Settlement Administration Costs. The Settlement Administration Costs will be paid from the Gross Settlement Fund. In the event the allocated Settlement Administration Costs exceed the actual costs incurred by the Settlement Administrator, the difference shall be a part of the Net Settlement Amount and distributed to the Participating Settlement Class Members.

32. “Settlement Administrator” means Apex Class Action, LLC, which the Parties have agreed to, subject to approval by the Court for the purposes of administering this Settlement. The Parties each represent that 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.

33. “Settlement Class Member(s)” or “Settlement Class” means all current and former non-exempt employees of Warby Parker who worked at Warby Parker retail locations in California at any time from March 13, 2019, through June 24, 2024, which represents 60 days after the Named Plaintiffs agreed in principle to resolve the Actions. This encompasses all Released Class Claims alleged on behalf of all individuals in each of the Actions and all Released PAGA Claims during the PAGA Period.

### III. TERMS OF AGREEMENT

Plaintiffs, on behalf of themselves and the Settlement Class, and Warby Parker agree as follows:

34. Consolidation of Actions for Settlement Purposes Only. For purposes of this Settlement only, on September 5, 2024, the Parties filed a joint stipulation requesting that the Court allow Plaintiffs to file a mutually agreeable Consolidated Amended Complaint in *Chery v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV417693) that includes all class and PAGA claims currently alleged in the Actions. On September 16, 2024, Plaintiffs filed a Consolidated Complaint (“Consolidated Amended Complaint”). All proceedings relating to the approval of the Settlement shall be before Judge Theodore C. Zayner in Santa Clara Superior Court.

35. Non-Waiver of Arbitration. The Settlement is not intended to and may not be deemed to affect the enforceability of any arbitration agreement between Warby Parker and any member of the Settlement Class Members and/or Allegedly Aggrieved Employees, including Plaintiffs.

36. Preliminary Approval Motion. The Parties agree to present the Settlement for Preliminary Approval, and consent to continued jurisdiction if Preliminary Approval is granted, to Judge Theodore C. Zayner in Santa Clara Superior Court, and Plaintiffs further agree to endeavor in good faith to file a Motion for Preliminary Approval, including all executed and necessary exhibits, within thirty (30) calendar days of executing this Settlement Agreement.

37. Funding of the Gross Settlement Fund and Employer’s Payroll Tax Payments. Warby Parker will make a one-time deposit of the Gross Settlement Fund of One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00) plus the Employer’s Share of Payroll Taxes into a Qualified Settlement Fund to be established by the Settlement Administrator in exchange for the promises set forth in this Settlement Agreement, including the Releases by the Participating Settlement Class Members and Plaintiffs for the Released Claims. The Individual Settlement Payments are not being

made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation. After the Effective Date, the Gross Settlement Fund will be used to pay: (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Class Representative Enhancement Payments; (iv) the Class Counsel Award; and (v) Settlement Administration Costs. Warby Parker will deposit the Gross Settlement Fund and the Employer's Share of Payroll Taxes by the Funding Date.

38. Non-Reversionary Settlement. Participating Settlement Class Members are entitled to one hundred percent (100%) of the Net Settlement Amount, to be distributed as outlined in Paragraph 17. Warby Parker maintains no reversionary right to any portion of the Net Settlement Amount, including any increase in the Net Settlement Amount resulting from a reduction in the Class Representative Enhancement Payments, Class Counsel Award, the PAGA Settlement Amount, and the Settlement Administration Costs. If there are any timely submitted opt outs or a reduction in the Class Representative Enhancement Payments, Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Participating Settlement Class Member so that the amount actually distributed to Participating Settlement Class Members equals one hundred percent (100%) of the corresponding Net Settlement Amount.

39. Attorneys' Fees and Costs. Class Counsel shall apply to the Court for attorneys' fees of not more than thirty-three percent (33%) of the Gross Settlement Fund, or Six Hundred Fifty Thousand Dollars (\$650,000.00), plus reasonable costs and expenses incurred, not to exceed Thirty Thousand Dollars (\$30,000.00) subject to proof by Class Counsel. The Settlement Administrator (and not Warby Parker) shall issue an IRS Form 1099 to Class Counsel reflecting the Class Counsel Award. Warby Parker agrees not to oppose Class Counsel's reasonable, collective request for a single award of attorneys' fees and costs in the amounts set forth in this paragraph.

40. Class Representative Enhancement Payments. In exchange for general releases of all known and unknown claims that they may have against Warby Parker and Released Parties based on their employment with Warby Parker (including a waiver of claims under Civil Code section 1542), subject to Paragraph 60(e), and in recognition of their service to the class, Plaintiffs shall apply for

1 Class Representative Enhancement Payments of Ten Thousand Dollars (\$10,000.00) each. The Class  
2 Representative Enhancement Payments will be paid from the Gross Settlement Fund and will be in  
3 addition to Plaintiffs' Individual Settlement Payments paid pursuant to the Settlement Agreement. The  
4 Settlement Administrator (and not Warby Parker) shall issue an IRS Form 1099 to each Plaintiff  
5 reflecting their Class Representative Enhancement Payments. Plaintiffs agree to assume responsibility  
6 of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant  
7 taxing authority the amounts required by law, if any, from their Class Representative Enhancement  
8 Payments. In addition, Plaintiffs shall hold Warby Parker and the Released Parties harmless and  
9 indemnify and defend Warby Parker and the Released Parties for all taxes, interest, penalties, and costs  
10 incurred by Warby Parker or the Released Parties by any reason of any claims relating to their non-  
11 withholding of taxes from the Class Representative Enhancement Award.

12 41. Settlement Administration Costs. The Settlement Administrator will be paid for the  
13 reasonable costs it incurs for purposes of administering the Settlement and distributing payments from  
14 the Gross Settlement Fund. These costs, which will be paid from the Gross Settlement Fund, will  
15 include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing and  
16 collection of 1099 and W-2 IRS Forms, distributing Notice Packets, processing Requests for Exclusion,  
17 Notices of Objection, and workweek disputes, performing single skip tracing services on Notice  
18 Packets returned as undeliverable, calculating and distributing from the Gross Settlement Fund, all  
19 Individual Settlement Payments, PAGA Settlement Amount, Class Representative Enhancement  
20 Payments, and Class Counsel Award, and providing necessary reports and declarations, among other  
21 tasks set forth in this Agreement.

22 42. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount  
23 of One Hundred Thirty Thousand Dollars (\$130,000.00) from the Gross Settlement Fund will be  
24 designated for satisfaction of Plaintiffs' and Allegedly Aggrieved Employees' PAGA claims. Pursuant  
25 to PAGA, Seventy-Five Percent (75%), or Ninety-Seven Thousand Five Hundred Dollars  
26 (\$97,500.00), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Thirty-Two  
27 Thousand Five Hundred Dollars (\$32,500.00), will be distributed on a pro rata basis based on the  
28 number of "weeks worked" or "workweeks" during the PAGA Period.

43. Net Settlement Amount. The entire Net Settlement Amount will be distributed to Participating Class Members as provided in Paragraph 38. No portion of the Net Settlement Amount will revert to or be retained by Warby Parker.

44. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount to Settlement Class Members on a pro rata basis depending on the number of “weeks worked” or “workweeks” (defined as any calendar week during the Class Period) in which a Settlement Class Member performed at least one day of work for Warby Parker. Settlement Class Members do not need to submit a claim to participate and receive their Individual Settlement Payment.

45. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the 25% portion of the PAGA Settlement Amount allocated to Allegedly Aggrieved Employees on a pro rata basis depending on the number of “weeks worked” or “workweeks” in which an Allegedly Aggrieved Employee performed at least one day of work for Warby Parker. Allegedly Aggrieved Employees do not need to submit a claim to participate in the PAGA portion of the Settlement and also may not opt out or object to the resolution of the PAGA claim.

46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Settlement Class Members and Individual PAGA Payments made to Allegedly Aggrieved Employees under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans. For the avoidance of doubt, no Settlement Class Member shall be entitled to any additional right, contribution, or amount under any benefit plan as a result of this Settlement or payments made hereunder.

47. Class/Collective/Representative Action Waiver. For settlement purposes only, Warby Parker and the Participating Settlement Class Members agree to not enforce the



1 Class/Collective/Representative Action Waiver in any existing arbitration agreement between any  
2 Participating Settlement Class Member and Warby Parker with respect to the Released Claims. For  
3 the avoidance of doubt, this Settlement Agreement does not otherwise modify or impact any party's  
4 rights with respect to any other potential claims covered by an existing arbitration agreement between  
5 any Participating Settlement Class Member and Warby Parker.

6 48. Administration Process. The Parties agree to cooperate in the administration of the  
7 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred  
8 in the administration of the Settlement.

9 49. Notice to Labor and Workforce Development Agency. Within ten (10) calendar days  
10 of the entry of the Court's order granting Preliminary Approval, Class Counsel will notify the LWDA  
11 of that order consistent with Paragraph 20 of this Agreement and Labor Code sections 2699(l)(2)–(3).

12 50. Class Action Fairness Act of 2005 ("CAFA") Notice. The Parties do not believe that  
13 notice requirements in 28 U.S.C. § 1715 are implicated by this settlement. Nonetheless, in light of the  
14 global settlement of multiple actions pending before different courts, in an abundance of caution, within  
15 ten (10) calendar days after Plaintiffs file their motion for Preliminary Approval of this proposed  
16 Settlement Agreement, Warby Parker will serve the appropriate California and federal officials with  
17 such notice in compliance with 28 U.S.C. § 1715. The Final Approval Hearing will not be noticed for  
18 a date any earlier than one hundred (100) calendar days after the date in which Plaintiffs file their  
19 motion for Preliminary Approval.

20 51. Preparation of the Class List. Within twenty (20) calendar days of the entry of the  
21 Court's order granting Preliminary Approval, Warby Parker will provide the Class List to the  
22 Settlement Administrator. Within fifteen (15) calendar days after the Response Deadline, the  
23 Settlement Administrator will provide to counsel for Warby Parker and Class Counsel the list of  
24 Participating Settlement Class Members, which, unless the Court orders otherwise, shall exclude  
25 individuals who filed a timely Request for Exclusion. The Settlement Administrator shall not provide  
26 social security numbers or contact information with this list.

27 52. Notice by Email and First-Class U.S. Mail. Within ten (10) calendar days after  
28 receiving the Class List from Warby Parker, the Settlement Administrator will mail a Notice Packet to

all Settlement Class Members via email and regular First-Class U.S. Mail, using the most current email and known mailing addresses identified in the Class List.

53. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail within three (3) business days of receipt to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such remailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address, and/or Social Security number of the Settlement Class Member involved, and will then perform a single re-mailing within three (3) business days of receipt. Settlement Class Members will have until the later of fifteen (15) calendar days from the date of the re-mailing or the Response Deadline to submit a Notice of Objection, Request for Exclusion, or workweeks dispute.

54. Notice Packets. All Settlement Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement Agreement's principal terms; (iii) the Settlement Class definition; (iv) the total number of workweeks each respective Settlement Class Member worked for Warby Parker during the Class Period; (v) each Settlement Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) each Allegedly Aggrieved Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (vii) the dates which comprise the Class Period and the PAGA Period; (viii) instructions on how to submit Requests for Exclusion or Notices of Objection or workweeks disputes; (ix) the deadlines by which the Settlement Class Member must postmark or fax Requests for Exclusion, Notices of Objection, and workweeks disputes; (x) the claims to be released; and (xi) the Settlement Administrator's contact information, including the website address where the electronic versions of the materials in the Notice Packet will be available. The Parties' proposed Notice Packet is attached hereto as **Exhibit A**.

1           55.   Posting of Settlement Agreement on Settlement Administrator's Website. Within ten  
2 (10) calendar days of entry of the order granting Preliminary Approval, the Settlement Administrator  
3 shall post the Settlement Agreement and any other Court-approved forms to its website.

4           56.   Disputed Information in Notice Packets. Settlement Class Members will have an  
5 opportunity to dispute the individualized information provided in their Notice Packets. To the extent  
6 Settlement Class Members dispute their employment dates or the number of workweeks on record,  
7 Settlement Class Members may produce evidence to the Settlement Administrator showing that such  
8 information is inaccurate by the Response Deadline. The Settlement Administrator will decide the  
9 dispute. Warby Parker's records will be presumed correct, but the Settlement Administrator will  
10 evaluate the evidence submitted by the Settlement Class Member and will make the final decision as  
11 to the merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen  
12 (15) business days of the Response Deadline.

13          57.   Request for Exclusion Procedures. Any Settlement Class Member wishing to opt out  
14 of the Settlement Agreement must sign and fax or mail a written Request for Exclusion to the  
15 Settlement Administrator by the Response Deadline. Any Settlement Class Member who timely  
16 submits a Request for Exclusion remains bound by the terms of any arbitration agreement executed  
17 with Warby Parker as outlined in Paragraph 35 of this Agreement. In the case of Requests for Exclusion  
18 that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to  
19 determine whether a Request for Exclusion has been timely submitted. Consistent with California law,  
20 Allegedly Aggrieved Employees may not opt out of the Settlement Agreement. Any Settlement Class  
21 Member who timely submits a Request for Exclusion will still receive an Individual PAGA Payment  
22 representing their portion of the PAGA Settlement Amount. All signatories and their counsel must not  
23 encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through  
24 any means. Objective statements to Settlement Class Members who call Class Counsel with inquiries  
25 regarding the Settlement Agreement, or the exercise of Class Counsel's ethical obligations, shall not  
26 be deemed a violation of the prohibitions contained herein.

27          58.   Defective Submissions. If a Settlement Class Member's Request for Exclusion is  
28 defective as to the requirements listed herein, that Settlement Class Member will be given an

1 opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class Member  
2 a cure letter within three (3) business days of receiving the defective submission to advise the  
3 Settlement Class Member that his or her submission is defective and that the defect must be cured to  
4 render the Request for Exclusion valid. The Settlement Class Member will have until the later of (i) the  
5 Response Deadline or (ii) ten (10) calendar days from the date of the cure letter to postmark or fax a  
6 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by  
7 fax within that period, it will be deemed untimely.

8 59. Cancellation of Settlement Agreement. Within fourteen (14) calendar days of the  
9 Response Deadline, as defined in the Court's Order granting Preliminary Approval of the Settlement,  
10 Warby Parker will have the option, in its sole discretion, to void the Settlement Agreement in its entirety  
11 if five percent (5%) or more of all individuals eligible to become members of the Settlement Class  
12 submit timely and valid Requests for Exclusion or are otherwise deemed by the Court not to be bound  
13 by the Settlement. If Warby Parker exercises this option, it shall be responsible for all Settlement  
14 Administration Costs incurred to the date of cancellation.

15 60. Releases.

16 60(a) Release of Class Claims by Settlement Class Members. The Parties agree that  
17 upon the Effective Date and Warby Parker's full funding of the Gross Settlement  
18 Fund, the terms set forth in this Settlement Agreement will release any further  
19 attempt by lawsuit, administrative claim or action, arbitration, demand, claims  
20 for civil penalties, or other action of any kind by each and all of the Participating  
21 Settlement Class Members, who shall release their right to pursue any and all  
22 claims against the Released Parties for the Released Class Claims, as fully  
23 described in Paragraph 26, arising during the Class Period.

24 60(b) Release of PAGA Claims by Allegedly Aggrieved Employees. The Parties  
25 agree that upon the Effective Date and Warby Parker's full funding of the Gross  
26 Settlement Fund, the terms set forth in this Settlement Agreement will release  
27 any further attempt by lawsuit, administrative claim or action, demand, claims  
28 for civil penalties, or other action of any kind by each and all of the Allegedly

Aggrieved Employees, who shall release their right to pursue any and all claims against the Released Parties for the Released PAGA Claims, as fully described in Paragraph 27, arising during the PAGA Period.

60(c) Release of Claims by Named Plaintiffs. Subject to Paragraph 60(e), upon the Effective Date and Warby Parker's full funding of the Gross Settlement Fund, in addition to the claims being released by all Participating Settlement Class Members and Allegedly Aggrieved Employees, Plaintiffs will release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have against the Released Parties based in any way on, or otherwise related to or arising from, their employment with Warby Parker as of the date of execution of this Settlement Agreement. The releases include, but are not limited to, all disputes relating to or arising out of any state, local, or federal statute, ordinance, regulation, order, or common law, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e), *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981, *et seq.*; the Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1939, as amended, 29 U.S.C. §§ 201, *et seq.* and Code of Federal Regulations; the Orders of the California Industrial Welfare Commission regulating wages, hours and working conditions; the California Fair Employment & Housing Act, as amended, Cal. Govt. Code §§ 12900, *et seq.*; the California Family Rights Act of 1991, as amended; Cal. Govt. Code § 12945.2; the California Unruh Civil Rights Act, as amended, Cal. Civ. Code §§ 51, *et seq.*; the California Labor Code (including any claim for civil penalties under the California Labor Code Private Attorneys General Act); the California Government Code; Article 1 of the California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12100, *et seq.*; the Family and Medical

1 Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq.* and any state law equivalent; the  
2 Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.*;  
3 the National Labor Relations Act, as amended, 29 U.S.C. §§ 151, *et seq.*;  
4 California Business and Professions Code §§ 17200, *et seq.*; other statutory and  
5 common law claims; statutory or common law rights to attorneys' fees and costs,  
6 penalties/fines, and/or punitive damages; any action based on contract, quasi-  
7 contract, quantum meruit, implied contract, tort, wrongful or constructive  
8 discharge, breach of the covenant of good faith and fair dealing, defamation,  
9 libel, slander, immigration issues, infliction of emotional distress, negligence,  
10 assault, battery, conspiracy, harassment, retaliation, discrimination on any basis  
11 prohibited by statute or public policy, conversion, any interference with business  
12 opportunity or with contract or based upon any other theory; and/or similar  
13 causes of action.

14 60(d) Named Plaintiffs General Release. Subject to Paragraph 60(e), upon the  
15 execution of the Settlement Agreement, to the extent allowed by California law,  
16 the Named Plaintiffs each waive all rights and benefits afforded by section 1542  
17 of the California Civil Code as to any Released Claims. Section 1542 provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
19 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
20 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
21 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
22 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
23 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

24 60(e) Pham's and Chery's Non-Wage Claims. Notwithstanding the foregoing,  
25 nothing in this Agreement requires Plaintiff Pham to release the non-wage-and-  
26 hour claims she currently alleges in *Pham v. Warby Parker Inc.* (Santa Clara  
27 Sup. Ct. Case No. 23CV417795). In addition, notwithstanding the foregoing,  
28 nothing in this Agreement requires Plaintiff Chery to release the non-wage-and-

hour claims he currently alleges in *Chery v. Warby Parker Inc., et al.* (AAA Case No. 01-23-0002-3818).

61. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Settlement Class Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims and Released PAGA Claims (collectively, the “Released Claims”), as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. The Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims currently pending or raised in the future. Notwithstanding the foregoing, this Settlement Agreement, if approved, precludes further PAGA claims irrespective of whether a request for exclusion is submitted. As a result, all Allegedly Aggrieved Employees—regardless of whether they submit a Request for Exclusion—shall receive a check for their share of the PAGA Settlement Amount when settlement payments are delivered, and they will be bound by a release of the PAGA claims as outlined in Paragraph 57.

62. Notice of Objection Procedures. To object to the Settlement Agreement, a Settlement Class Member must mail or fax a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain all information required by this Settlement Agreement. The postmark or fax-stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely. The Settlement Administrator will notify any person from whom it receives a Notice of Objection that is not timely and/or valid if, in fact, such Notice of Objection is not timely and/or valid. Any disputes regarding the timeliness, validity or effectiveness of a Notice of Objection shall be decided by the Settlement Administrator consistent with the terms of this Agreement, and with the Parties’ input, if appropriate. Settlement Class Members who fail to object in the manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Settlement Class Members who submit timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit

1 or otherwise encourage Settlement Class Members to submit written objections to the Settlement  
2 Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent  
3 any Settlement Class Members with respect to any such objections to this Settlement.

4 63. Certification Reports Regarding Individual Settlement Payment Calculations. The  
5 Settlement Administrator will provide Warby Parker's counsel and Class Counsel a weekly report that  
6 identifies the number of Settlement Class Members who have submitted valid Requests for Exclusion,  
7 or objected to the Settlement, and whether any Settlement Class Member has submitted a challenge to  
8 any information contained in his or her Notice Packet as provided in Paragraph 56. Additionally, the  
9 Settlement Administrator will provide counsel for all Parties with any updated reports regarding the  
10 administration of the Settlement Agreement as needed or requested, as consistent with the terms of the  
11 Settlement Agreement.

12 64. Distribution Timing of Individual Settlement Payments. The Settlement Administrator  
13 will distribute the funds in the Gross Settlement Fund within the time period set forth with respect to  
14 each category of payment.

15 64(a) Class Counsel Award and Class Representative Enhancement Payments:

16 Within twenty-one (21) calendar days of the Funding Date, Plaintiffs and Class  
17 Counsel will provide W-9 forms to the Settlement Administrator, who will  
18 issue payments to Class Counsel of the Class Counsel Award and Class  
19 Representative Enhancement Payments in the amounts awarded by the Court.

20 64(b) Individual Settlement Payment and PAGA Settlement Amount: Within

21 twenty-one (21) calendar days of the Funding Date, the Settlement  
22 Administrator will issue the LWDA Payment to the LWDA, the Individual  
23 Settlement Payments to the Participating Settlement Class Members, and the  
24 Individual PAGA Payments to the Allegedly Aggrieved Employees. The  
25 Settlement Administrator will also issue a payment to itself for Court-  
26 approved services performed in connection with the Settlement in the amount  
27 approved by the Court.  
28



65. Un-cashed Settlement Checks. Individual Settlement Payment and/or Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be void. Funds from the uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the benefits of those Allegedly Aggrieved Employees and Participating Settlement Class Members who did not cash their checks until such time as they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement Amount (plus the PAGA Settlement Amount) will be paid to the Allegedly Aggrieved Employees and Participating Settlement Class Members, whether or not they all cash their Individual Settlement Payment and/or Individual PAGA Payment checks.

66. Certification of Completion. Upon completion of the administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

67. Treatment of Individual Settlement Payments. For tax purposes, the Individual PAGA Payments from the PAGA Settlement Amount will be treated as 100% penalties and will be reported on IRS Form 1099. Individual Settlement Payments will be allocated as follows: (i) thirty-five percent (35%) to settlement of wage claims and (ii) sixty-five percent (65%) to settlement of claims for interest and statutory penalties. The portion allocated to wages shall be reported on an IRS Form W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. Participating Settlement Class Members shall be responsible for remitting to state and/or federal taxing authorities any applicable other taxes due. Neither this Agreement, nor any of its attachments, should be interpreted to contain or constitute representations or advice regarding any U.S. federal or state tax issue. Settlement Class Members and Allegedly Aggrieved Employees will be specifically informed that neither Warby Parker nor Class Counsel make any representations regarding the tax implications of any amounts paid under this Settlement Agreement and that if Settlement Class Members or Allegedly Aggrieved Employees have any questions regarding those implications, they can and should consult a tax expert.

68. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiffs, Participating Settlement Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all Settlement Class Member payroll taxes and penalties to the appropriate government authorities. All Settlement Class Members, including Participating Settlement Class Members and Allegedly Aggrieved Employees, shall be solely and exclusively responsible for remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold Warby Parker and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, and expenses caused by any such taxing authority relating in any way to the Allegedly Aggrieved Employees', Settlement Class Members' and Participating Settlement Class Members' tax treatment of payments made to them pursuant to this Stipulation or failure to timely or properly pay any taxes owed on their respective Individual Settlement Payment.

69. Tax Liability. Warby Parker makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Settlement Class Members are not relying on any statement, representation, or calculation by Warby Parker or by the Settlement Administrator in this regard.

70. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY," AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN

1 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT  
2 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR  
3 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
4 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER  
5 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
6 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY  
7 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY  
8 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER  
9 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
10 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
11 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
12 AGREEMENT.

13 71. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
14 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
15 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause  
16 of action or right herein released and discharged.

17 72. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally  
18 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other  
19 reason, then this Settlement Agreement, except as expressly agreed upon in writing by the Parties, will  
20 be null and void. Any order or judgment entered by the Court in furtherance of this Settlement  
21 Agreement will likewise be treated as void from the beginning.

22 73. Termination of Settlement Agreement. Plaintiffs (by unanimous agreement of all  
23 Plaintiffs) and Warby Parker will each have the right to unilaterally terminate this Settlement  
24 Agreement by providing written notice of their election to do so ("Termination Notice") to all other  
25 Parties hereto within ten (10) business days of any of the following occurrences; provided, however,  
26 that the Parties agree to cooperate in good faith to address any issues the Court raises in connection  
27 with issuing Preliminary and/or Final Approval of the Settlement:  
28

73(a) the Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval Order or a Final Approval Order with respect to the Settlement Agreement and the Parties are not permitted to remedy any deficiencies the Court identifies;

73(b) an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand; or

73(c) any court incorporates terms into, or deletes or strikes terms from, or modifies, amends, or changes the Preliminary Approval Order, the Final Approval Order, or the Settlement Agreement in a way that Plaintiffs or Warby Parker reasonably consider material, unless the modification or amendment is accepted in writing by all Parties, except that, as provided above, the Court's approval of Attorneys' Fees and Costs, Class Counsel Awards, and Class Representative Enhancement Payments, or their amounts, is not a condition of the Settlement Agreement.

74. Reversion *Nunc Pro Tunc*. If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur: (a) all Orders certifying the Settlement Class for purposes of effecting this Settlement, and all preliminary and/or final findings regarding the Settlement Class, shall be void *ab initio* and automatically vacated upon notice to the Court, (b) the Actions shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and (c) the Actions shall revert *nunc pro tunc* to the procedural status quo as of the date and time immediately before the execution of the Settlement Agreement, in accordance with this Settlement Agreement. The Parties further agree that, by assenting to the filing of a Consolidated Amended Complaint for purposes of this Settlement only, Warby Parker does not admit any facts or waive any defenses, and any Answer or other Responsive Pleading that Warby Parker may file to the Consolidated Amended Complaint shall not be construed as a consent to remand any claims pending or proceeding in any United States District Court or other forum, nor shall it be deemed as a consent to proceed to litigate any class allegations as pled in the

1 Consolidated Amended Complaint in the Santa Clara Superior Court should this Settlement Agreement  
2 not receive Final Approval.

3 75. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to  
4 request the Preliminary Approval of the Settlement Agreement and the entry of an order: (i)  
5 conditionally certifying the Settlement Class for settlement purposes only; (ii) granting preliminary  
6 approval to the proposed Settlement Agreement; (iii) setting a deadline for Class Counsel to file an  
7 application for attorneys' fees and costs and an application for a Class Representative Enhancement  
8 Award for Plaintiffs; and (iv) setting a date for a Final Approval Hearing. The Preliminary Approval  
9 Order will provide for the Notice Packet to be sent to all Settlement Class Members as specified herein.  
10 In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement  
11 Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet,  
12 which will include the proposed Notice of Class Action Settlement, attached as **Exhibit A**. Class  
13 Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

14 76. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to  
15 postmark Requests for Exclusion or Notices of Objection (and no earlier than one hundred (100)  
16 calendar days after the date on which Plaintiffs file their motion for Preliminary Approval) and with  
17 the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine  
18 the Final Approval of the Settlement Agreement along with the amounts properly payable for:  
19 (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Class Representative  
20 Enhancement Payments; (iv) the Class Counsel Award; and (v) all Settlement Administration Costs.  
21 Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class  
22 Counsel will also be responsible for drafting the Class Counsel Award and Class Representative  
23 Enhancement Payments application to be heard at the Final Approval/Settlement Fairness Hearing.

24 77. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the  
25 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a proposed form  
26 of Judgment to the Court for its approval, which Class Counsel shall submit to the Court that (i)  
27 approves the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, adequate, and  
28 directing consummation of its terms and provisions; (ii) approving Class Counsel's application for an

award of attorneys' fees and costs; (iii) approving the Class Representative Enhancement Awards; (iv) approving the PAGA Settlement Amount; (v) the Settlement Administrator's fees from the Gross Settlement Amount; (vi) barring all Allegedly Aggrieved Employees and Participating Class Members from prosecuting against the Released Parties, or any of them, any of the Released Claims. As required by California Rule of Court 3.769(h), after entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

78. Older Workers' Benefit Protection Act Waiver.

78(a) Plaintiffs specifically intend that the claims they are releasing herein include any claims that Plaintiffs may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers' Benefit Protection Act of 1990.

78(b) Plaintiffs are advised to consult with their counsel before signing this Settlement Agreement because Plaintiffs are permanently giving up significant legal rights. Plaintiffs acknowledge that they have been so advised.

78(c) Plaintiffs acknowledge that they have been given at least twenty-one (21) calendar days to execute and return this Settlement Agreement and have been advised that, after they execute this Settlement Agreement, Plaintiffs have seven (7) calendar days to reconsider and revoke the Settlement Agreement, recognizing that Plaintiffs will not be provided anything under this Settlement Agreement until at least that seven (7)-day revocation period has expired. The general release will then become effective on the eighth (8th) calendar day after it is signed, provided that Plaintiffs do not revoke it.

78(d) In order to effectively revoke this general release, the Parties agree that Plaintiffs must provide written notice of such revocation within seven (7) calendar days after Plaintiffs execute this Settlement Agreement to counsel for

Warby Parker, Katherine V.A. Smith and Katie M. Magallanes, via email to KSmith@gibsondunn.com and KMagallanes@gibsondunn.com.

79. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

80. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms and, should this Settlement Agreement receive Final Approval, its terms will supersede all prior written or oral agreements between the Parties.

81. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

82. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

83. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

84. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

85. Execution and Counterparts. This Settlement Agreement is subject to the execution of all Parties. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

1           86.   Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this  
2 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at  
3 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into  
4 account all relevant factors, present and potential. The Parties further acknowledge that they are each  
5 represented by competent counsel and that they have had an opportunity to consult with their counsel  
6 regarding the fairness and reasonableness of this Settlement.

7           87.   Invalidity of Any Provision. Before declaring any provision of this Settlement  
8 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
9 possible consistent with applicable precedents so as to define all provisions of this Settlement  
10 Agreement as valid and enforceable.

11           88.   Waiver of Certain Appeals. With the exception of a right to appeal the reduction of any  
12 award of attorneys' fees, costs, and expenses as provided herein, Plaintiffs and Warby Parker hereby  
13 waive their right to appeal or seek other judicial review of any order that is materially consistent with  
14 the terms of this Settlement Agreement.

15           89.   Class Certification for Settlement Purposes Only. The Parties stipulate to class  
16 certification of any claims not yet certified for purposes of implementing the Settlement only, and in  
17 no way is that an admission by Warby Parker that class certification is proper. The Settlement will not  
18 be admissible in any proceeding as evidence that (i) a class or collective should be certified as Plaintiffs  
19 have proposed for any claims, including but not limited to any currently non-certified claims; (ii) any  
20 of the Actions should proceed on a representative basis pursuant to PAGA; or (iii) Warby Parker is  
21 liable to Plaintiffs or any other individuals they claim to represent in any of the Actions in connection  
22 with any claims that were or could have been asserted in any of the Actions. Any Settlement Class  
23 Member who timely submits a Request for Exclusion remains bound by the terms of any  
24 Class/Collective/Representative Action Waiver executed with Warby Parker.

25           90.   Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute  
26 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In  
27 entering into this Settlement, Warby Parker does not admit, and specifically denies, that it violated any  
28 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute



1 or any other applicable laws, regulations, or legal requirements; breached any contract; violated or  
2 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful  
3 conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or  
4 provisions, nor any of the negotiations connected with it, will be construed as an admission or  
5 concession by Warby Parker of any such violations or failures to comply with any applicable law.  
6 Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement  
7 and its terms and provisions will not be offered or received as evidence in any action or proceeding to  
8 establish any liability or admission on the part of Warby Parker or to establish the existence of any  
9 condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable  
10 law.

11 91. Media Restrictions. The Parties and their counsel agree that they will not issue any  
12 press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement.  
13 Unless required by applicable law, neither the Plaintiffs nor Class Counsel shall publicize the terms of  
14 this Settlement Agreement in any medium, or initiate or issue any press release or have any  
15 communications to the press or media concerning the Actions, the Settlement of the Actions, and/or  
16 this Settlement Agreement, except as posted by the Settlement Administrator as ordered by the Court.  
17 Class Counsel shall not include, and shall affirmatively remove, any reference to any of the foregoing  
18 subjects in any advertising, mass mailing, website, or other communication. If counsel for any Party  
19 receives an inquiry about the Settlement from the media, counsel may respond only after the motion  
20 for Preliminary Approval has been filed and only by confirming the terms of the Settlement.  
21 Notwithstanding the foregoing, nothing will prevent Class Counsel from communicating confidentially  
22 with Settlement Class Members as necessary to fulfill their obligations as Class Counsel.

23 92. Waiver. No waiver of any condition or covenant contained in this Settlement  
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to  
25 imply or constitute a further waiver by such party of the same or any other condition, covenant, right,  
26 or remedy.

27 93. Enforcement Actions. In the event that one or more of the Parties institutes any legal  
28 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement

1 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
2 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
3 expert witness fees incurred in connection with any enforcement actions.

4 94. Disputes Regarding Settlement Agreement. In the event that there are any disputes  
5 arising out of or relating to this Settlement Agreement, any such dispute will be submitted to Hon.  
6 Angela M. Bradstreet (Ret.) or a mutually agreeable mediator for mediation.

7 95. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
8 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
9 construed more strictly against one party than another merely by virtue of the fact that it may have been  
10 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length  
11 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement  
12 Agreement.

13 96. Representation by Counsel. The Parties acknowledge that they have been represented  
14 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
15 that this Settlement Agreement has been executed with the advice of counsel. Further, Plaintiffs and  
16 Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

17 97. All Terms Subject to Final Court Approval. All amounts and procedures described in  
18 this Settlement Agreement herein will be subject to final Court approval.

19 98. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good  
20 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this  
21 Settlement Agreement.

22 99. Binding Agreement. The Parties warrant that they understand and have full authority  
23 to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully  
24 enforceable and binding on all parties, with retention of jurisdiction by the Court as provided therein,  
25 and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms.

26 SIGNATURE PAGE FOLLOWS  
27  
28

1 READ CAREFULLY BEFORE SIGNING

2  
3 Dated: September <sup>27</sup>\_\_, 2024

By: Cindy Pham  
Cindy Pham (Sep 27, 2024 17:06 PDT)  
Cindy Pham  
Plaintiff and Class Representative

4  
5  
6 Dated: September \_\_, 2024

By: \_\_\_\_\_  
Robert Chery  
Plaintiff and Class and PAGA  
Representative


7  
8  
9 Dated: September \_\_, 2024

By: \_\_\_\_\_  
Savanna Jacobsen  
Plaintiff and Class and PAGA  
Representative

10  
11  
12 Dated: September \_\_, 2024

By: \_\_\_\_\_  
Zaven McCarty  
Plaintiff and Class and PAGA  
Representative

13  
14  
15 Dated: September <sup>17</sup>\_\_, 2024

By:   
Signed by:  
Chris Utecht  
4254B2BC7091428  
Warby Parker Representative  
Warby Parker Inc. and  
Warby Parker Retail, Inc.

16  
17  
18  
19 17-Sep-2024 | 10:37 AM PDT

READ CAREFULLY BEFORE SIGNING

Dated: September \_\_, 2024

By: \_\_\_\_\_  
Cindy Pham  
Plaintiff and Class Representative

Dated: September 30, 2024

By: robert chery  
robert chery (Sep 30, 2024 15:32 PDT)  
Robert Chery  
Plaintiff and Class and PAGA  
Representative

Dated: September \_\_, 2024

By: \_\_\_\_\_  
Savanna Jacobsen  
Plaintiff and Class and PAGA  
Representative

Dated: September \_\_, 2024

By: \_\_\_\_\_  
Zaven McCarty  
Plaintiff and Class and PAGA  
Representative

Dated: September 17, 2024

By: \_\_\_\_\_  
SIGNED BY: Chris Utecht  
4254B2BC7091428...  
Warby Parker Representative  
Warby Parker Inc. and  
Warby Parker Retail, Inc.

17-Sep-2024 | 10:37 AM PDT

**READ CAREFULLY BEFORE SIGNING**


Dated: September \_\_, 2024

By: \_\_\_\_\_  
Cindy Pham  
Plaintiff and Class Representative

Dated: September \_\_, 2024

By: \_\_\_\_\_  
Robert Chery  
Plaintiff and Class and PAGA  
Representative


Dated: September 26, 2024

By:  \_\_\_\_\_  
Savanna Jacobsen (Sep 26, 2024 11:35 PDT)  
Savanna Jacobsen  
Plaintiff and Class and PAGA  
Representative

Dated: September \_\_, 2024

By: \_\_\_\_\_  
Zaven McCarty  
Plaintiff and Class and PAGA  
Representative

Dated: September 17, 2024

By:  \_\_\_\_\_  
Signed by:  
Chris Utchit  
4254B2BC7091428...  
Warby Parker Representative  
Warby Parker Inc. and  
Warby Parker Retail, Inc.

17-Sep-2024 | 10:37 AM PDT


1 READ CAREFULLY BEFORE SIGNING

2  
3 Dated: September \_\_, 2024 By: \_\_\_\_\_  
4 Cindy Pham  
5 Plaintiff and Class Representative

6  
7 Dated: September \_\_, 2024 By: \_\_\_\_\_  
8 Robert Chery  
9 Plaintiff and Class and PAGA  
10 Representative

11  
12 Dated: September \_\_, 2024 By: \_\_\_\_\_  
13 Savanna Jacobsen  
14 Plaintiff and Class and PAGA  
15 Representative

16  
17 Dated: September <sup>2323</sup>\_\_, 2024 By: Zaven McCarty  
18 Zaven McCarty (Sep 23, 2024 20:28 EDT)  
19 Zaven McCarty  
20 Plaintiff and Class and PAGA  
21 Representative

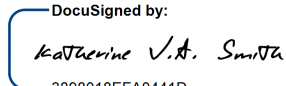
22  
23 Dated: September 17, 2024 By:   
24 Signed by: 4254B2BC7091428  
25 Warby Parker Representative  
26 Warby Parker Inc. and  
27 Warby Parker Retail, Inc.

28  
17-Sep-2024 | 10:37 AM PDT

APPROVED AS TO FORM

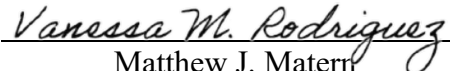
Dated: September 17, 2024

Gibson, Dunn & Crutcher LLP

By:   
Katherine V.A. Smith  
Attorney for Warby Parker Inc. and  
Warby Parker Retail, Inc.  
17-Sep-2024 | 10:05 AM PDT


Dated: October 1, 2024

Matern Law Group, PC

By:   
Matthew J. Matern  
Matthew W. Gordon  
Vanessa M. Rodriguez  
Attorneys for Plaintiffs Cindy Pham,  
Savanna Jacobsen, and Zaven McCarty

Dated: September 30, 2024

Zakay Law Group, APLC  
JCL Law Firm, APC

By:   
Jean-Claude Lapuyade  
Attorney for Plaintiff Robert Chery

# **EXHIBIT A**



**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR  
FINAL COURT APPROVAL**

***Pham v. Warby Parker Inc., et al.* (N.D. Cal. Case No. 5:23-cv-01184-NC)**

***Chery v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV417693)**

***Jacobsen et al. v. Warby Parker Inc., et al.* (Santa Clara Sup. Ct. Case No. 23CV421588)**

*The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

**You may be eligible to receive money** from employee class action lawsuits (the “Actions”) entitled *Pham v. Warby Parker Inc., et al.*; *Chery v. Warby Parker Inc., et al.*; and *Jacobsen et al. v. Warby Parker Inc., et al.* for alleged wage and hour violations. The Actions were filed by former Warby Parker Inc. (“Warby Parker”) employees – Cindy Pham, Robert Chery, Savanna Jacobsen, and Zaven McCarty (“Plaintiffs”) and seek (1) monetary relief for a class of: (i) all current and former non-exempt employees of Warby Parker who worked at Warby Parker retail locations in California at any time from March 13, 2019, through June 24, 2024 (“Settlement Class Members”); and (2) civil penalties under the California Private Attorneys General Act (“PAGA”) for all current and former non-exempt employees of Warby Parker who worked at Warby Parker retail locations in California from April 12, 2022 through June 24, 2024 (“Allegedly Aggrieved Employees”). “Class Period” means the period from March 13, 2019 through June 24, 2024. “PAGA Period” means the period from April 12, 2022 through June 24, 2024.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Warby Parker to fund Individual Settlement Payments, and (2) a PAGA Settlement requiring Warby Parker to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Warby Parker’s records, and the parties’ current assumptions, your Individual Settlement Payment is estimated to be \$ [redacted] (less withholding) and your Individual PAGA Payment is estimated to be \$ [redacted]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Warby Parker’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

The above estimates are based on Warby Parker’s records showing that you worked [redacted] workweeks during the Class Period and you worked [redacted] workweeks during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. *See* Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not. **Read this Notice carefully.** You will be deemed to have carefully read

and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Warby Parker to make payments under the Settlement and requires Class Members and Allegedly Aggrieved Employees to give up their rights to assert certain claims against Warby Parker.

If you worked for Warby Parker during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and be eligible for an Individual Settlement Payment and/or an Individual PAGA Payment. As a Participating Settlement Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Warby Parker.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Settlement Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Warby Parker. You cannot opt-out of the PAGA portion of the proposed Settlement.

**Warby Parker will not retaliate against you for any actions you take with respect to the proposed Settlement.**

#### SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

|   |  |
|---|--|
| <p><b>You do not have to do anything to participate in the Settlement.</b></p>  | <p>If you do nothing, you will be a Participating Settlement Class Member, eligible for an Individual Settlement Payment and/or an Individual PAGA Payment. In exchange, you will give up your right to assert the wage claims against Warby Parker that are covered by this Settlement (<i>i.e.</i>, the Released Claims).</p>  |
| <p><b>You can opt-out of the Class Settlement but not the PAGA Settlement.</b></p> <p><b>The opt-out deadline is <span style="background-color: yellow;">  </span>.</b></p> | <p>If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Settlement Class Member and no longer eligible for an Individual Settlement Payment. Non-Participating Settlement Class Members cannot object to any portion of the proposed Settlement. <i>See</i> Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Warby Parker must pay Individual PAGA Payments to all Allegedly Aggrieved Employees and the Allegedly Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p> |

|   |   |
|---|---|
| <p><b>Participating Settlement Class Members can object to the Class Settlement but not the PAGA Settlement.</b></p> <p><b>Written objections must be submitted by <b>II</b>.</b></p> | <p>All Class Members who do not opt-out (“Participating Settlement Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Actions on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Settlement Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. <i>See</i> Section 7 of this Notice.</p> |
| <p><b>You can participate in the Final Approval Hearing.</b></p>  | <p>The Court’s Final Approval Hearing is scheduled to take place on <b>II</b>. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Settlement Class Members can verbally object to the Settlement at the Final Approval Hearing. <i>See</i> Section 8 of this Notice.</p>   |
| <p><b>You can challenge the calculation of your Workweeks</b></p> <p><b>Written challenges must be submitted by <b>II</b>.</b></p>  | <p>The amount of your Individual Settlement Payment and Individual PAGA Payment (if any) depend on how many workweeks in which you worked at least one day during the Class Period and how many workweeks in which you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and PAGA workweeks you worked according to Warby Parker’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <b>II</b>. <i>See</i> Section 4 of this Notice.</p>  |

## 1. WHAT ARE THE ACTIONS ABOUT?

Plaintiffs are former Warby Parker employees. The Actions allege that Warby Parker violated California labor laws by failing to provide compliant meal periods and rest breaks; failing to pay all wages owed, including overtime; failing to properly pay wages at the regular rate of pay, including overtime, double-time, meal period premiums, and sick pay; failing to provide written notice of paid sick leave; failing to reimburse necessary business expenses; failing to provide accurate wage statements; and failing to timely pay wages, including at termination. Based on the same claims, Plaintiffs has also asserted claims for violations of the UCL, California Business & Professions Code section 17200 *et seq.* and claims for civil penalties under the PAGA (Labor Code sections 2698, *et seq.*). Warby Parker denies the allegations in the Actions and Warby Parker asserts it has properly paid Warby Parker employees.

## **2. WHAT DOES IT MEAN THAT THE ACTIONS HAVE SETTLED?**

The Court has made no determination whether Warby Parker or Plaintiffs are correct on the merits. Plaintiffs and Warby Parker hired an experienced, neutral mediator in an effort to resolve the Actions by negotiating an end to the Actions by agreement (settle the cases) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Actions and enforcing the Agreement, Plaintiffs and Warby Parker have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Warby Parker does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Warby Parker has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Settlement Class Members and Allegedly Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

## **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

- a. Warby Parker Will Pay \$1,950,000.00 as the Gross Settlement Fund (“Gross Settlement”). Warby Parker has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Settlement Payments, Individual PAGA Payments, Class Representative Enhancement Payments, Class Counsel’s attorney’s fees and expenses, the Settlement Administrator’s expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Warby Parker will fund the Gross Settlement not more than twenty (20) business days after the Effective Date. The Effective Date means the later of: (i) if no timely objections are filed, or if filed, are withdrawn prior to final approval, the date upon which the Court enters an order granting final approval of the Settlement Agreement; or (ii) if timely objections are filed and not withdrawn, then either five (5) calendar days from the final resolution of any appeals timely filed or the expiration date of the time for filing or noticing any such appeals, provided that the Settlement is finally approved.
- b. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - i. Up to \$650,000.00 (one-third of the Gross Settlement Fund) to Class Counsel for attorneys’ fees and up to \$30,000.00 for litigation expenses. To date, Class Counsel has worked and incurred expenses on the Actions without payment.

- ii. Up to \$10,000.00 to each Plaintiff as a Class Representative Enhancement Payment for filing the Actions, working with Class Counsel, and representing the Class. The Class Representative Enhancement Payments will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Settlement Payment(s) and any Individual PAGA Payment(s).
- iii. Up to \$15,000.00 to the Administrator for services administering the Settlement.
- iv. Up to \$130,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Allegedly Aggrieved Employees based on their PAGA workweeks.

Participating Settlement Class Members have the right to object to any of these deductions. The Court will consider all objections.

- c. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Settlement Payments to Participating Settlement Class Members based on their Class Period Workweeks.
- d. Taxes Owed on Payments to Class Members. The Individual Settlement Payments shall be broken down as follows: 35% ("Wage Portion") of each Individual Settlement Payment to taxable wages and 65% ("Non-Wage Portion") to penalties and interest. The Wage Portion is subject to withholding and will be reported on IRS W-2 Forms. Warby Parker will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Settlement Payments on IRS 1099 Forms.

Although Plaintiffs and Warby Parker have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- e. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Settlement Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Controller's Unclaimed Property Fund for

instructions on how to retrieve your money.

- f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Settlement Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than **§**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the **§** Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (*i.e.*, Non-Participating Settlement Class Members) will not receive Individual Settlement Payments but will preserve their rights to personally pursue wage and hour claims against Warby Parker.
- g. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Settlement Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Warby Parker based on the PAGA Period facts alleged in the Actions.
- h. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Warby Parker have agreed that, in either case, the Settlement will be void. This means that Warby Parker will not pay any money and Class Members will not release any claims against Warby Parker.
- i. Administrator. The Court has appointed a neutral company, Apex Class Action, LLC (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member challenges over workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- j. Participating Settlement Class Members' Release. After the Judgment is final and Warby Parker has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Settlement Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Warby Parker or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Actions and resolved by this Settlement.

The Participating Settlement Class Members will release all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties (including but not limited to waiting time penalties and all other penalties available under the California Labor Code), costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity, or otherwise, during the Class Period, known or unknown, that were or could have reasonably been alleged based upon the facts pleaded in the Actions, including: (a) all claims for wage statement violations (Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001); (b) all claims for unpaid minimum wages (Labor Code §§ 1194, 1197, 1197.1, and IWC Wage Order No. 7-2001); (c) all claims for unpaid overtime (Labor Code §§ 510, 1194, 1198, and IWC Wage Order 4, and IWC Wage Order 7-2001); (d) all claims for failure to pay meal period and rest break premium wages at the regular rate of pay (Labor Code §§ 226.7, 510, 512, 1194, 1197, and IWC Wage Order No. 7-2001, §§ 11, 12); (e) all claims for failure to indemnify employees for necessary expenditures incurred in discharge of duties (Labor Code § 2802); (f) all claims for the failure to timely pay wages during employment (Labor Code §§ 204, 210); (g) all claims for the failure to timely pay wages upon termination, failure to pay waiting time penalties, and failure to pay all wages due to discharged and quitting employees (Labor Code §§ 201, 202 and 203); (h) failure to pay sick pay at the regular rate of pay (Labor Code § 246); (i) failure to provide written notice of paid sick leave (Labor Code § 246); and (j) all claims asserted through California Business & Professions Code section 17200 *et seq.* arising out of the aforementioned claims during the Class Period.

- k. Allegedly Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Warby Parker has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Allegedly Aggrieved Employees will be barred from asserting PAGA claims against Warby Parker, whether or not they exclude themselves from the Settlement. This means that all Allegedly Aggrieved Employees, including those who are Participating Settlement Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Warby Parker or its related entities based on the PAGA Period facts alleged in the Actions and resolved by this Settlement.

The Released PAGA Claims consists of all claims for PAGA penalties, costs, expenses, attorneys' fees, during the PAGA Period, that were or could have reasonably been alleged based upon the facts pleaded in the Actions and the PAGA claim notices that Plaintiffs Chery, Jacobsen, and McCarty provided to the LWDA prior to commencing the Actions asserted through California Labor Code section 2698 *et seq.*, including any and all claims described in the Released Class Claims, including any derivative claims, arising during the PAGA Period.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

- a. Individual Settlement Payments. The Administrator will calculate Individual

Settlement Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Settlement Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Settlement Class Member.

- b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$32,500.00 by the total number of PAGA workweeks worked by all Allegedly Aggrieved Employees and (b) multiplying the result by the number of PAGA workweeks worked by each individual Aggrieved Employee.
- c. Workweek Challenges. The number of Class workweeks you worked during the Class Period and the number of PAGA workweeks you worked during the PAGA Period, as recorded in Warby Parker's records, are stated in the first page of this Notice. You have until    to challenge the number of workweeks credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Warby Parker's calculation of workweeks based on Warby Parker's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Settlement Class Members) and Warby Parker's Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

## **5. HOW WILL I GET PAID?**

- a. Participating Settlement Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Settlement Class Member (*i.e.*, every Class Member who does not opt-out) including those who also qualify as Allegedly Aggrieved Employees. The single check will combine the Individual Settlement Payment and the Individual PAGA Payment, if applicable.
- b. Non-Participating Settlement Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (*i.e.*, every Non-Participating Settlement Class Member).

**Your check will be sent to the same address as in this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**



## **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Actions as *Pham v. Warby Parker Inc., et al*; *Chery v. Warby Parker Inc., et al.*; and *Jacobsen et al. v. Warby Parker Inc., et al.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by [redacted], or it will be invalid. Section 9 of the Notice has the Administrator's contact information. Remember, you cannot opt-out of the PAGA portion of the Settlement.

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Settlement Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Warby Parker are asking the Court to approve. At least [redacted] days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Enhancement Payments for being Class Representatives. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Court's website ([redacted]).

A Participating Settlement Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses, and Class Representative Enhancement Payments may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. The deadline for sending written objections to the Administrator is [redacted]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Actions as *Pham v. Warby Parker Inc., et al*; *Chery v. Warby Parker Inc., et al.*; and *Jacobsen et al. v. Warby Parker Inc., et al.*, and include your name, current address, telephone number, and approximate dates of employment for Warby Parker and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Settlement Class Member can object (or personally retain a lawyer to object at their own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing. Remember, you cannot object to the PAGA portion of the Settlement.

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but do not have to, attend the Final Approval Hearing in Department 19 on [redacted] at [redacted] at the Superior Court of Santa Clara, located at 191 N. First Street, San Jose, California 95113. At the

Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comments from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website (1) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Warby Parker and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to (<https://traffic.sccscourt.org/search>) and entering the Case Number for the Actions: 23CV417693. You can also make an appointment to personally review court documents in the Clerk's Office.

### DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

The contact information for the Settlement Administrator is as follows:



The addresses for the Parties' Counsel are as follows:

| Class Counsel   | Defense Counsel  |
|---|--|
| <p>MATERN LAW GROUP, PC<br/> Matthew J. Matern, SBN 159798<br/> mmatern@maternlawgroup.com<br/> Matthew W. Gordon, SBN 267971<br/> mgordon@maternlawgroup.com<br/> Vanessa M. Rodriguez, SBN 316382<br/> vrodriguez@maternlawgroup.com<br/> 1230 Rosecrans Avenue, Suite 200<br/> Manhattan Beach, CA 90266<br/> Telephone: 310.531.1900<br/> Facsimile: 310.531.1901</p> <p>JCL LAW FIRM, APC<br/> Jean-Claude Lapuyade<br/> jlapuyade@jcl-lawfirm.com</p> | <p>GIBSON, DUNN &amp; CRUTCHER LLP<br/> KATHERINE V.A. SMITH, SBN 247866<br/> KSmith@gibsondunn.com<br/> 333 South Grand Avenue<br/> Los Angeles, California 90071<br/> Telephone: 213.229.7000<br/> Facsimile: 213.229.7520</p> <p>GIBSON, DUNN &amp; CRUTCHER LLP<br/> KATIE M. MAGALLANES, SBN 300277<br/> KMagallanes@gibsondunn.com<br/> JESSICA M. PEARIGEN, SBN 317286<br/> JPearigen@gibsondunn.com<br/> 3161 Michelson Drive<br/> Irvine, California 92612-4412<br/> Telephone: 949.451.3800<br/> Facsimile: 949.451.4220</p> |

|  |   |
|--|---|
| 5440 Morehouse Drive, Suite 3600<br>San Diego, CA 92121<br>Telephone: 619.599.8292<br>Facsimile: 619.599.8291<br><br>ZAKAY LAW GROUP, APLC<br>Shani O. Zakay<br>shani@zakaylaw.com<br>5440 Morehouse Drive, Suite 3600<br>San Diego, CA 92121<br>Telephone: 619.255.9047 | GIBSON, DUNN & CRUTCHER LLP<br>HARRIS M. MUFSON (pro hac vice)<br>HMufson@gibsondunn.com<br>200 Park Avenue<br>New York, New York 10166-0193<br>Telephone: 212.351.4000<br>Facsimile: 212.351.4035<br><br>GIBSON, DUNN & CRUTCHER LLP<br>JORDAN E. JOHNSON, SBN 324051<br>JJohnson@gibsondunn.com<br>1801 California Street Suite 4200<br>Denver, Colorado 80202-2642<br>Telephone: 303.298.5700<br>Facsimile: 303.298.5907 |
|--|---|

#### **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the California Controller's Unclaimed Property Fund for instructions on how to retrieve the funds.

#### **11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

# **EXHIBIT B**



ZAKAY LAW GROUP  
A PROFESSIONAL LAW CORPORATION

Client # 60701

April 11, 2023

**Via Online Filing to LWDA and Certified Mail to Defendants**  
**Labor and Workforce Development Agency**  
Online Filing

**WARBY PARKER INC. f/k/a JAND, INC.**

c/o CSC - Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

***Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 9537***

**WARBY PARKER RETAIL, INC.**

c/o CSC - Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

***Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 9544***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff ROBERT CHERY ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant WARBY PARKER INC. f/k/a JAND, INC. ("Defendant Warby Parker") and Defendant WARBY PARKER RETAIL, INC. ("Defendant Warby Parker Retail") (collectively, hereinafter, "Defendants"). Plaintiff has been employed by Defendants since December of 2019, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Page 2 of 2

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant Warby Parker and/or Defendant Warby Parker Retail in California during the relevant claim period.**

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

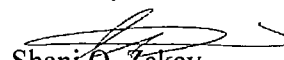
To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay  
Attorney for Plaintiff

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
 Sydney Castillo-Johnson (State Bar #343881)  
 Monnett De La Torre (State Bar #272884)  
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 San Diego, CA 92121  
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[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SANTA CLARA**

ROBERT CHERY, an individual, on behalf of  
 himself, and on behalf of all persons similarly  
 situated,

Plaintiffs,

v.

WARBY PARKER INC. f/k/a JAND, INC., a  
 Delaware corporation; WARBY PARKER  
 RETAIL, INC., a Delaware corporation; and  
 DOES 1-50, Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

**DEMAND FOR A JURY TRIAL**

PLAINTIFF ROBERT CHERY ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant WARBY PARKER INC. f/k/a JAND, INC. ("Defendant Warby Parker") is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant WARBY PARKER RETAIL, INC. ("Defendant Warby Parker Retail") is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant Warby Parker and Defendant Warby Parker Retail were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

4. DEFENDANT is a retailer of prescription glasses, contact lenses and sunglasses and operates retail stores throughout California, including in the county of Santa Clara where PLAINTIFF worked.

5. PLAINTIFF has been employed by DEFENDANT in California December of 2019 as a non-exempt employee, paid an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.



1           6.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
2 defined as all persons who are or previously were employed by Defendant Warby Parker and/or  
3 Defendant Warby Parker Retail in California and classified as non-exempt employees (the  
4 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing  
5 of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").  
6 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is  
7 under five million dollars (\$5,000,000.00).

8           7.     PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
9 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
10 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
11 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged  
12 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained  
13 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA  
14 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
15 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
16 other members of the CALIFORNIA CLASS who have been economically injured by  
17 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
18 relief.

19           8.     The true names and capacities, whether individual, corporate, subsidiary,  
20 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are  
21 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious  
22 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
23 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
24 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
25 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
26 inclusive, are responsible in some manner for one or more of the events and happenings that  
27 proximately caused the injuries and damages hereinafter alleged.

1           9.     The agents, servants and/or employees of the Defendants and each of them acting  
2 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
3 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
4 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
5 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
6 Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
8 Defendants' agents, servants and/or employees.

9           10.    DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the  
10 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or  
11 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
12 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
13 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
14 at all relevant times.

15           11.    DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of  
16 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,  
17 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
18 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
19 civil penalties for each underpaid employee.

20           12.    DEFENDANT's uniform policies and practices alleged herein were unlawful,  
21 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain  
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

23           13.    PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and  
25 other members of the CALIFORNIA CLASS who has been economically injured by  
26 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
27 relief.

28     ///

14. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

**THE CONDUCT**

16. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable

1 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS  
2 PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
5 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
6 meaning the time during which an employee is subject to the control of an employer, including  
7 all the time the employee is suffered or permitted to work. From time to time during the CLASS  
8 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
9 without paying them for all the time they were under DEFENDANT's control. Specifically,  
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be  
11 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not  
12 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS  
13 Members forfeited minimum wage and overtime compensation by regularly working without their  
14 time being accurately recorded and without compensation at the applicable minimum wage and  
15 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other  
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business  
17 records.

18 18. From time to time during the CLASS PERIOD, as a result of their rigorous work  
19 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
20 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
22 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
23 more than five (5) hours during some shifts without receiving a meal break. Further,  
24 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
25 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
26 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other  
27 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-  
28 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other

CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

**B. Rest Period Violations**

19. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

**C. Wage Statement Violations**

20. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay  
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
5 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
6 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
7 accurate wage statements which failed to show, among other things, all deductions, the total hours  
8 worked and all applicable hourly rates in effect during the pay period, and the corresponding  
9 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
10 meal and rest periods. Further, from time to time, DEFENDANT issued wage statements to  
11 PLAINTIFF and other CALIFORNIA CLASS Members that failed to provide the correct name  
12 and address of the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

13 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
14 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
15 Cal. Lab. Code § 226.

16 23. As a result, DEFENDANT issued PLAINTIFF and other members of the  
17 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
18 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional  
19 payroll error due to clerical or inadvertent mistake.

20 **D. Unreimbursed Business Expenses**

21 24. DEFENDANTS, as a matter of corporate policy, practice, and procedure,  
22 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF and  
23 the other CALIFORNIA CLASS Members for required business expenses incurred by the  
24 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their  
25 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are  
26 required to indemnify employees for all expenses incurred in the course and scope of their  
27 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them to  
2 be unlawful."

3 25. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS  
4 Members as a business expense, were required by DEFENDANTS to use their own personal cellular  
5 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but  
6 were not reimbursed or indemnified by DEFENDANTS for the costs associated with the use of  
7 their personal cellular phones for DEFENDANTS' benefit. Specifically, PLAINTIFF and other  
8 CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular  
9 phones to conduct work related business. As a result, in the course of their employment with  
10 DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
11 unreimbursed business expenses which included, but were not limited to, costs related to the use of  
12 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

13 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

14 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
15 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
16 for all hours worked.

17 27. During the CLASS PERIOD, from time-to-time DEFENDANT required  
18 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
19 work, including but not limited to performing keyholder duties such as unlocking and locking  
20 doors, disarming and arming security systems at DEFENDANT'S store. This resulted in  
21 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-  
22 clock.

23 28. DEFENDANT directed and directly benefited from the undercompensated off-the-  
24 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

25 29. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
26 assignments, and employment conditions of PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS.

28 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to

document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

32. DEFENDANT's policies and practices deprived PLAINTIFF and the other CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

33. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business records.

**F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay**

35. From time to time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and



1 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business  
2 records.

3 36. State law provides that employees must be paid overtime at one-and-one-half times  
4 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were  
5 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
6 employee's performance.

7 37. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
8 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
9 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
10 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
11 basis with bonus compensation when the employees met the various performance goals set by  
12 DEFENDANTS.

13 38. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
14 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
15 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
16 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
17 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked  
18 rather than just all non-overtime hours worked. Management and supervisors described the  
19 incentive/bonus program to potential and new employees as part of the compensation package.  
20 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
21 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
22 in a systematic underpayment of overtime and double time compensation, meal and rest period  
23 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by  
24 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
25 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
26 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
27 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by  
28 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of

1 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
2 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

3 39. In violation of the applicable sections of the California Labor Code and the  
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
5 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
6 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
7 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.  
8 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment  
9 of the correct overtime and double time compensation, meal and rest period premiums, and sick  
10 pay as required by California law which allowed DEFENDANT to illegally profit and gain an  
11 unfair advantage over competitors who complied with the law. To the extent equitable tolling  
12 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the  
13 CLASS PERIOD should be adjusted accordingly.

14 **G. Unlawful Rounding Practices**

15 40. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place  
16 an immutable timekeeping system to accurately record and pay PLAINTIFFS and other  
17 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
18 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice  
19 that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being undercompensated for  
20 all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and  
21 unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and  
22 the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their  
23 time worked, including the applicable overtime compensation for overtime worked. As a result,  
24 PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited  
25 compensation for their time worked by working without their time being accurately recorded and  
26 without compensation at the applicable overtime rates.

27 41. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
28 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members' time  
being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding

1 policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as  
2 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-  
3 duty meal break.

4 **H. Timekeeping Manipulation**

5 42. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
6 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
7 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
8 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
9 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
10 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
11 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
12 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
rest break.

13 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
14 time-to-time, forfeited time worked by working without their time being accurately recorded and  
15 without compensation at the applicable pay rates.

16 44. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
17 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
18 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
19 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
20 were not at all times provided an off-duty meal break. This practice is a direct result of  
21 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute  
22 off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

23 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for  
25 the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to  
26 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in  
27 accordance with applicable law is evidenced by DEFENDANTS' business records.

28 ///

**I. Violations for Untimely Payment of Wages**

46. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

**J. Unlawful Deductions**

47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which he was required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for required business expenses related to the use of his personal cell phone in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

**CLASS ACTION ALLEGATIONS**

49. PLAINTIFF bring this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by Defendant Warby Parker and/or Defendant Warby Parker Retail in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

51. The members of the class are so numerous that joinder of all class members is impractical.

52. Common questions of law and fact regarding DEFENDANT’s conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

- 1 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 2 Members accurate premium payments for missed meal and rest periods;
- 3 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 4 Members accurate overtime wages;
- 5 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 6 Members at least minimum wage for all hours worked;
- 7 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
- 8 CLASS Members for required business expenses;
- 9 g. Whether DEFENDANT issued legally compliant wage statements;
- 10 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 11 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 12 CLASS for all time worked;
- 13 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 14 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 15 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 16 of this work, required employees to perform this work and permits or suffers to
- 17 permit this work;
- 18 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 19 UCL, by failing to provide the PLAINTIFF and the other members of the
- 20 CALIFORNIA CLASS with the legally required meal and rest periods.

21 53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
22 a result of DEFENDANT's conduct and actions alleged herein.

23 54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
24 PLAINTIFF have the same interests as the other members of the class.

25 55. PLAINTIFF will fairly and adequately represent and protect the interests of the  
26 CALIFORNIA CLASS Members.

27 56. PLAINTIFF retained able class counsel with extensive experience in class action  
28 litigation.

1           57. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
2 interest of the other CALIFORNIA CLASS Members.

3           58. There is a strong community of interest among PLAINTIFF and the members of  
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
6 sustained.

7           59. The questions of law and fact common to the CALIFORNIA CLASS Members  
8 predominate over any questions affecting only individual members, including legal and factual  
9 issues relating to liability and damages.

10          60. A class action is superior to other available methods for the fair and efficient  
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
12 since the damages suffered by individual members of the class may be relatively small, the  
13 expense and burden of individual litigation makes it practically impossible for the members of the  
14 class individually to redress the wrongs done to them. Without class certification and  
15 determination of declaratory, injunctive, statutory, and other legal questions within the class  
16 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
17 create the risk of:

- 18           a. Inconsistent or varying adjudications with respect to individual members of the  
19 CALIFORNIA CLASS which would establish incompatible standards of conduct  
20 for the parties opposing the CALIFORNIA CLASS; and/or,  
21           b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
22 which would as a practical matter be dispositive of the interests of the other  
23 members not party to the adjudication or substantially impair or impeded their  
24 ability to protect their interests.

25          61. Class treatment provides manageable judicial treatment calculated to bring an  
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
27 the conduct of DEFENDANT.

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**FIRST CAUSE OF ACTION**

**Unlawful Business Practices**

**(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

**(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

62. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

63. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

64. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

65. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

66. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or substantially injurious to employees, and were without valid justification or utility for which



1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 67. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
5 mandated meal and rest periods and the required amount of compensation for missed meal and  
6 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all  
7 necessary business expenses incurred, due to a systematic business practice that cannot be  
8 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission  
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should  
10 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
11 restitution of wages wrongfully withheld.

12 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
13 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
15 DEFENDANT.

16 69. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
19 required by Cal. Lab. Code §§ 226.7 and 512.

20 70. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
22 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
23 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
24 hours of work.

25 71. PLAINTIFF further demands on behalf of himself and on behalf of each  
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
27 not timely provided as required by law.

28

1           72. By and through the unlawful and unfair business practices described herein,  
2 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
4 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
5 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
6 to unfairly compete against competitors who comply with the law.

7           73. All the acts described herein as violations of, among other things, the Industrial  
8 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
9 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and  
10 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business  
11 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

12           74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
13 and do, seek such relief as may be necessary to restore to them the money and property which  
14 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
16 business practices, including earned but unpaid wages for all time worked.

17           75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
20 engaging in any unlawful and unfair business practices in the future.

21           76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
27 unlawful and unfair business practices.

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**SECOND CAUSE OF ACTION**

**Failure To Pay Minimum Wages**

**(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

**Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

77. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

79. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

80. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

81. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

1           84. In committing these violations of the California Labor Code, DEFENDANT  
2 inaccurately calculated the correct time worked and consequently underpaid the actual time  
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
6 laws and regulations.

7           85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
9 minimum wage compensation for their time worked for DEFENDANT.

10          86. During the CLASS PERIOD, PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a  
12 failure to pay all earned wages.

13          87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
15 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
17 to them, and which will be ascertained according to proof at trial.

18          88. DEFENDANT knew or should have known that PLAINTIFF and the other  
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.  
20 DEFENDANT systematically elected, either through intentional malfeasance or gross  
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
22 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
24 for their time worked.

25          89. In performing the acts and practices herein alleged in violation of California labor  
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the  
2 consequences to them, and with the despicable intent of depriving them of their property and legal  
3 rights, and otherwise causing them injury in order to increase company profits at the expense of  
4 these employees.

5 90. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
7 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
8 California Labor Code and/or other applicable statutes. To the extent minimum wage  
9 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
10 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or  
11 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
12 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
13 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good  
14 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
15 recover statutory costs.

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

18 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

20 91. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
22 Complaint.

23 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
24 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
25 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
26 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
27 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.  
28

1           93. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
2 policy, an employer must timely pay its employees for all hours worked.

3           94. Cal. Lab. Code § 510 provides that employees in California shall not be employed  
4 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless  
5 they receive additional compensation beyond their regular wages in amounts specified by law.

6           95. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
7 including minimum and overtime compensation and interest thereon, together with the costs of  
8 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours  
9 than those fixed by the Industrial Welfare Commission is unlawful.

10          96. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
11 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
12 they worked, including overtime work.

13          97. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
15 implementing a uniform policy and practice that failed to accurately record overtime worked by  
16 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
18 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
19 (12) hours in a workday, and/or forty (40) hours in any workweek.

20          98. In committing these violations of the California Labor Code, DEFENDANT  
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
22 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
23 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
24 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
25 regulations.

26          99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
28 overtime compensation for their time worked for DEFENDANT.

1           100. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
2 from the overtime requirements of the law. None of these exemptions are applicable to  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the  
4 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining  
5 agreement that would preclude the causes of action contained herein this Complaint. Rather,  
6 PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on  
7 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of  
8 California.

9           101. During the CLASS PERIOD, PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting  
11 a failure to pay all earned wages.

12           102. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
13 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even  
15 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required  
16 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT  
17 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
18 witnessed by employees.

19           103. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
21 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA  
22 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
23 presently unknown to them, and which will be ascertained according to proof at trial.

24           104. DEFENDANT knew or should have known that PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.  
26 DEFENDANT systematically elected, either through intentional malfeasance or gross  
27 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
28 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF

1 and the other members of the CALIFORNIA CLASS the correct overtime wages for their  
2 overtime worked.

3 105. In performing the acts and practices herein alleged in violation of California labor  
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the  
8 consequences to them, and with the despicable intent of depriving them of their property and legal  
9 rights, and otherwise causing them injury in order to increase company profits at the expense of  
10 these employees.

11 106. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
12 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
14 California Labor Code and/or other applicable statutes. To the extent overtime compensation is  
15 determined to be owed to the CALIFORNIA CLASS Members who have terminated their  
16 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore  
17 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
18 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,  
19 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are  
20 entitled to seek and recover statutory costs.

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

25 107. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and  
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
27 Complaint.  
28



1           108. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
2 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
3 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
4 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
5 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
6 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not  
7 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's  
8 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required  
9 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business  
10 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS  
11 Members with a second off-duty meal period in some workdays in which these employees were  
12 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other  
13 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
14 and in accordance with DEFENDANT's strict corporate policy and practice.

15           109. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
16 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
17 who were not provided a meal period, in accordance with the applicable Wage Order, one  
18 additional hour of compensation at each employee's regular rate of pay for each workday that a  
19 meal period was not provided.

20           110. As a proximate result of the aforementioned violations, PLAINTIFF and  
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

23  
24  
25  
26  
27 ///  
28

**FIFTH CAUSE OF ACTION**

**Failure To Provide Required Rest Periods**

**(Cal. Lab. Code §§ 226.7 & 512)**

**(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

112. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

114. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

# **SIXTH CAUSE OF ACTION**

## **Failure To Provide Accurate Itemized Statements**

### **(Cal. Lab. Code § 226)**

#### **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

116. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

117. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

118. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

119. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

///

**SEVENTH CAUSE OF ACTION**

**Failure To Pay Wages When Due**

**(Cal. Lab. Code § 203)**

**(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

120. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

121. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

122. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

123. Cal. Lab. Code § 202 provides, in relevant part, 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

124. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

125. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 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.

126. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

127. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

### **EIGHTH CAUSE OF ACTION**

#### **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

**(Cal. Lab. Code §§ 2802)**

**(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all Defendants)**

128. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

129. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

130. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones, personal computers and personal home internet all on behalf of and for the benefit of

1 DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were  
2 required by DEFENDANT to use their personal cellular phones for work-related business.  
3 DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
4 the CALIFORNIA CLASS members for expenses resulting from using their personal cellular  
5 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.  
6 These expenses were necessary to complete their principal job duties. DEFENDANT are estopped  
7 by DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses  
8 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA members,  
9 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
10 members for these expenses as an employer is required to do under the laws and regulations of  
11 California.

12 131. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
13 by them and the CALIFORNIA CLASS members in the discharge of their job duties for  
14 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory  
15 rate and costs under Cal. Lab. Code § 2802.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and  
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
22 b. An order temporarily, preliminarily and permanently enjoining and restraining  
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
24 c. An order requiring DEFENDANT to pay all overtime wages and all sums  
25 unlawfully withheld from compensation due to PLAINTIFF and the other members  
26 of the CALIFORNIA CLASS; and  
27 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
28 for restitution of the sums incidental to DEFENDANT's violations due to

PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

///



1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 6

7 DATED: April 11, 2023

8 **ZAKAY LAW GROUP, APLC**

9 By: 

10 Shani O. Zakay

11 Attorney for PLAINTIFF

12

13

14

15 **DEMAND FOR A JURY TRIAL**

16 PLAINTIFF demands a jury trial on issues triable to a jury.

17

18 DATED: April 11, 2023

19 **ZAKAY LAW GROUP, APLC**

20 By: 

21 Shani O. Zakay

22 Attorney for PLAINTIFF

23

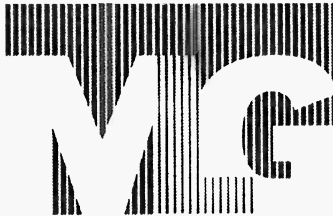
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**MATERN LAW GROUP, PC**

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Manhattan Beach, California 90266  
www.maternlawgroup.com  
Tel: (310) 531-1900 | Fax: (310) 531-1901

June 8, 2023

**Via Online Submission**

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

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Retail, Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Re: Notice Pursuant to California Labor Code § 2699.3**  
**Employee: Savanna Jacobsen**  
**Employers: Warby Parker Inc. and Warby Parker Retail, Inc.**

To Whom It May Concern:

This office represents Savanna Jacobsen (“Ms. Jacobsen”), who was jointly employed by Warby Parker Inc. and Warby Parker Retail, Inc. (collectively, “Warby Parker”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Ms. Jacobsen alleges Warby Parker has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Warby Parker in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Warby Parker. Enclosed please find a draft of Ms. Jacobsen’s proposed complaint, which is incorporated by reference into this notice. Pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B), our office is submitting a \$75.00 filing fee to the Accounting Unit of the Department of Industrial Relations.

This letter also serves as notice of Ms. Jacobsen’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all

## **MATERN LAW GROUP, PC**

June 8, 2023

Page 2 of 9

electronic files and hard-copy documents that are related to Ms. Jacobsen's employment and potential claims must be preserved, even without a court order.

Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential representative action on behalf of Warby Parker's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 7-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Ms. Jacobsen on behalf of herself and all other similarly-situated current and former non-exempt employees of Warby Parker in the State of California during the one year preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay at the regular rate of pay for each workday a meal period was not provided; employees were not provided one hour of pay at the regular rate of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.<sup>1</sup> Given the overtime, meal period and rest period violations and Warby Parker's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Warby Parker's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

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<sup>1</sup> "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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**Failure to Provide Meal Periods**

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Ms. Jacobsen and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11. Warby Parker failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Ms. Jacobsen’s and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Warby Parker consistently failed to provide Ms. Jacobsen and other aggrieved employees meal breaks because Ms. Jacobsen and other aggrieved employees were given too much work to perform to take meal breaks.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Ms. Jacobsen and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

**Failure to Authorize and Permit Rest Periods**

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Ms. Jacobsen and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 7-2001. Warby Parker failed to authorize and permit its employees to take required rest periods. Warby Parker consistently failed to authorize and permit Ms. Jacobsen and other similarly-situated individuals to take rest breaks because Ms. Jacobsen and other similarly-situated individuals were given too much work to perform to take rest breaks. When Ms. Jacobsen and other aggrieved employees were able to take rest breaks, Warby Parker failed to authorize and permit Ms. Jacobsen and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

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Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Ms. Jacobsen and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

### **Failure to Pay Minimum Wages**

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Ms. Jacobsen and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4. Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Ms. Jacobsen and other similarly-situated individuals to work off-the-clock, including requiring, suffering, or permitting Ms. Jacobsen and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Jacobsen and other aggrieved employees; and other methods to be discovered.

Warby Parker's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4.

### **Failure to Pay Overtime Wages**

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Jacobsen and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001. Warby Parker failed to compensate Ms. Jacobsen and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, including but not limited to failing to include all remuneration in the calculation of the regular rate of pay for overtime purposes; requiring, suffering or permitting Ms. Jacobsen and other aggrieved employees to work off-the-clock, including requiring, suffering, or permitting Ms. Jacobsen and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Jacobsen and other aggrieved employees; and other methods to be discovered.

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In violation of California law, Warby Parker has refused to perform its obligations to compensate Ms. Jacobsen and other aggrieved employees for all wages earned and all hours worked. Warby Parker's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3.

**Failure to Timely Pay All Wages Earned**

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Warby Parker required Ms. Jacobsen and other aggrieved employees to work off-the-clock without compensation, including requiring Ms. Jacobsen and other aggrieved employees to work through required meal breaks without compensation. Additionally, Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Warby Parker also failed to pay Ms. Jacobsen and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Warby Parker knew it was required to pay overtime wages, yet on many occasions failed to pay Ms. Jacobsen and other aggrieved employees overtime wages on any payday.

**Failure to Pay All Wages Due Upon Separation**

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

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Warby Parker willfully failed to pay accrued wages and other compensation to Ms. Jacobsen and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Warby Parker required Ms. Jacobsen and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Ms. Jacobsen and other aggrieved employees the proper premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Warby Parker failed and continues to fail to pay the full earned and unpaid wages due to Ms. Jacobsen and other aggrieved employees upon separation.

**Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the 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 the employee.

Warby Parker failed to provide Ms. Jacobsen and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Ms. Jacobsen and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 7-2001, § 7.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Ms. Jacobsen and other aggrieved employees lost wages. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the wage statements. As a result, Ms. Jacobsen and other aggrieved employees lost wages. Warby Parker also did not properly calculate the regular rate of pay of Ms. Jacobsen and other aggrieved employees. As a result, Ms. Jacobsen's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

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### **Failure to Maintain Required Records**

Warby Parker failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

### **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Warby Parker failed to indemnify Ms. Jacobsen and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Warby Parker, including but not limited to expenses for cell phone usage, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

\*\*\*

This notice is hereby given to Warby Parker and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Warby Parker, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.



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**This notice shall further represent Ms. Jacobsen's reasonable attempt to settle his dispute with Warby Parker prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Warby Parker of Ms. Jacobsen's aforementioned grievances and the proposed remedies as detailed below, while affording Warby Parker reasonable opportunity to meet Ms. Jacobsen's demands.**

Demand is hereby made that Warby Parker shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Warby Parker shall pay Ms. Jacobsen and all other similarly-situated persons employed by Warby Parker at any time during the past 12 months back pay and compensation for the above-referenced violations.

2. Warby Parker shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Warby Parker shall conduct a survey or interview all current and former non-exempt employees in California during the past 12 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Warby Parker shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Warby Parker also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Warby Parker shall reimburse those employees who were forced to pay for any business expenses incurred for Warby Parker's benefit, including but not limited to cell phone.

6. Warby Parker shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Warby Parker shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Warby Parker shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 7-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by mail addressed to Matern Law Group, PC,

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1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the LWDA or Warby Parker require additional information regarding Mr. McCarty's allegations.

Thank you for your prompt attention to this matter.

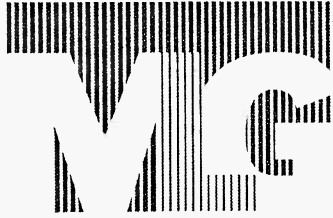
Very truly yours,

MATERN LAW GROUP, PC

A handwritten signature in black ink, appearing to read "Matthew W. Gordon", with a long horizontal flourish extending to the right.

Matthew W. Gordon

cc: Katie M. Magallanes, Esq. (via U.S. Mail)



**MATERN LAW GROUP, PC**

1230 Rosecrans Avenue, Suite 200  
Manhattan Beach, California 90266  
www.maternlawgroup.com  
Tel: (310) 531-1900 | Fax: (310) 531-1901

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**Via Online Submission**

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

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Retail, Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Re: Notice Pursuant to California Labor Code § 2699.3**  
**Employee: Zaven McCarty**  
**Employers: Warby Parker Inc. and Warby Parker Retail, Inc.**

To Whom It May Concern:

This office represents Zaven McCarty (“Mr. McCarty”), who was jointly employed by Warby Parker Inc. and Warby Parker Retail, Inc. (collectively, “Warby Parker”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Mr. McCarty alleges Warby Parker has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Warby Parker in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Warby Parker. Enclosed please find a draft of Mr. McCarty’s proposed complaint, which is incorporated by reference into this notice. Pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B), our office is submitting a \$75.00 filing fee to the Accounting Unit of the Department of Industrial Relations.

This letter also serves as notice of Mr. McCarty’s demand for preservation and non-

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spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. McCarty's employment and potential claims must be preserved, even without a court order.

Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential representative action on behalf of Warby Parker's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 7-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Mr. McCarty on behalf of himself and all other similarly-situated current and former non-exempt employees of Warby Parker in the State of California during the one year preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay at the regular rate of pay for each workday a meal period was not provided; employees were not provided one hour of pay at the regular rate of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.<sup>1</sup> Given the overtime, meal period and rest period violations and Warby Parker's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Warby Parker's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

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<sup>1</sup> "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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### **Failure to Provide Meal Periods**

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. McCarty and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11. Warby Parker failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. McCarty’s and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Warby Parker consistently failed to provide Mr. McCarty and other aggrieved employees meal breaks because Mr. McCarty and other aggrieved employees were given too much work to perform to take meal breaks.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Mr. McCarty and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

### **Failure to Authorize and Permit Rest Periods**

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. McCarty and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 7-2001. Warby Parker failed to authorize and permit its employees to take required rest periods. Warby Parker consistently failed to authorize and permit Mr. McCarty and other similarly-situated individuals to take rest breaks because Mr. McCarty and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. McCarty and other aggrieved employees were able to take rest breaks, Warby Parker failed to authorize and permit Mr. McCarty and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

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Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Mr. McCarty and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

**Failure to Pay Minimum Wages**

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. McCarty and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4. Warby Parker failed to pay Mr. McCarty and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. McCarty and other similarly-situated individuals to work off-the-clock, including requiring, suffering, or permitting Mr. McCarty and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. McCarty and other aggrieved employees; and other methods to be discovered.

Warby Parker's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4.

**Failure to Pay Overtime Wages**

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. McCarty and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001. Warby Parker failed to compensate Mr. McCarty and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, including but not limited to failing to include all remuneration in the calculation of the regular rate of pay for overtime purposes; requiring, suffering or permitting Mr. McCarty and other aggrieved employees to work off-the-clock, including requiring, suffering, or permitting Mr. McCarty and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. McCarty and other aggrieved employees; and other methods to be discovered.

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In violation of California law, Warby Parker has refused to perform its obligations to compensate Mr. McCarty and other aggrieved employees for all wages earned and all hours worked. Warby Parker's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3.

**Failure to Timely Pay All Wages Earned**

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Warby Parker failed to pay Mr. McCarty and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Warby Parker required Mr. McCarty and other aggrieved employees to work off-the-clock without compensation, including requiring Mr. McCarty and other aggrieved employees to work through required meal breaks without compensation. Additionally, Warby Parker failed to pay Mr. McCarty and other aggrieved employees premium wages owed for each workday a meal periods was not provided and each workday a rest period was not authorized and permitted.

Warby Parker also failed to pay Mr. McCarty and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Warby Parker knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. McCarty and other aggrieved employees overtime wages on any payday.

**Failure to Pay All Wages Due Upon Separation**

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

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Warby Parker willfully failed to pay accrued wages and other compensation to Mr. McCarty and other aggrieved employees in accordance with Labor Code §§ 201-203. Because Warby Parker required Mr. McCarty and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. McCarty and other aggrieved employees the proper premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Warby Parker failed and continues to fail to pay the full earned and unpaid wages due to Mr. McCarty and other aggrieved employees upon separation.

**Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the 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 the employee.

Warby Parker failed to provide Mr. McCarty and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. McCarty and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 7-2001, § 7.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. McCarty and other aggrieved employees lost wages. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the wage statements. As a result, Mr. McCarty and other aggrieved employees lost wages. Warby Parker also did not properly calculate the regular rate of pay of Mr. McCarty and other aggrieved employees. As a result, Mr. McCarty's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.



## **MATERN LAW GROUP, PC**

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### **Failure to Maintain Required Records**

Warby Parker failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

### **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Warby Parker failed to indemnify Mr. McCarty and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Warby Parker, including but not limited to expenses for cell phone usage, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

\*\*\*

This notice is hereby given to Warby Parker and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Warby Parker, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

## **MATERN LAW GROUP, PC**

June 8, 2023

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**This notice shall further represent Mr. McCarty's reasonable attempt to settle his dispute with Warby Parker prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Warby Parker of Mr. McCarty's aforementioned grievances and the proposed remedies as detailed below, while affording Warby Parker reasonable opportunity to meet Mr. McCarty's demands.**

Demand is hereby made that Warby Parker shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Warby Parker shall pay Mr. McCarty and all other similarly-situated persons employed by Warby Parker at any time during the past 12 months back pay and compensation for the above-referenced violations.

2. Warby Parker shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Warby Parker shall conduct a survey or interview all current and former non-exempt employees in California during the past 12 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phone usage, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Warby Parker shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Warby Parker also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Warby Parker shall reimburse those employees who were forced to pay for any business expenses incurred for Warby Parker's benefit, including but not limited to cell phone usage.

6. Warby Parker shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Warby Parker shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Warby Parker shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 7-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by mail addressed to Matern Law Group, PC,

**MATERN LAW GROUP, PC**

June 8, 2023

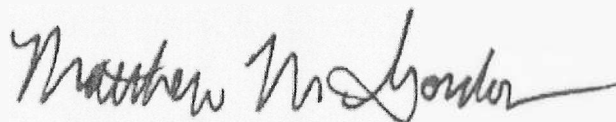
Page 9 of 9

1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the LWDA or Warby Parker require additional information regarding Mr. McCarty's allegations.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC

A handwritten signature in dark ink, appearing to read "Matthew W. Gordon", with a long horizontal flourish extending to the right.

Matthew W. Gordon

cc: Katie M. Magallanes, Esq. (via U.S. Mail)



1230 Rosecrans Avenue, Suite 200  
Manhattan Beach, California 90266  
www.maternlawgroup.com  
Tel: (310) 531-1900 | Fax: (310) 531-1901

August 9, 2023

**Via Online Submission**

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

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Retail, Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Re: Amended Notice Pursuant to California Labor Code § 2699.3**  
**LWDA Case No.: LWDA-CM-960728-23**  
**Employee: Savanna Jacobsen**  
**Employers: Warby Parker Inc. and Warby Parker Retail, Inc.**

To Whom It May Concern:

This office represents Savanna Jacobsen (“Ms. Jacobsen”), who was jointly employed by Warby Parker Inc. and Warby Parker Retail, Inc. (collectively, “Warby Parker”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Ms. Jacobsen alleges Warby Parker has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Warby Parker in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Warby Parker. Enclosed please find a draft of Ms. Jacobsen’s proposed complaint, which is incorporated by reference into this notice.

We are investigating a potential representative action on behalf of Warby Parker’s current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor

## **MATERN LAW GROUP, PC**

August 9, 2023

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Code §§ 226.7 and 512 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 7-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224. This notice amends the PAGA claim notice filed by Ms. Jacobsen on June 8, 2023, LWDA Case No. LWDA-CM-960728-23, to add additional claims regarding Warby Parker's failure to pay sick pay at the regular rate of pay and failure to provide written notice of paid sick leave.

The allegations made by Ms. Jacobsen on behalf of herself and all other similarly-situated current and former non-exempt employees of Warby Parker in the State of California during the one year preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay at the regular rate of pay for each workday a meal period was not provided; employees were not provided one hour of pay at the regular rate of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.<sup>1</sup> Given the overtime, meal period and rest period violations and Warby Parker's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Warby Parker's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

### **Failure to Provide Meal Periods**

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

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<sup>1</sup> "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

## **MATERN LAW GROUP, PC**

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If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Ms. Jacobsen and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11. Warby Parker failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Ms. Jacobsen’s and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Warby Parker consistently failed to provide Ms. Jacobsen and other aggrieved employees meal breaks because Ms. Jacobsen and other aggrieved employees were given too much work to perform to take meal breaks.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Ms. Jacobsen and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

### **Failure to Authorize and Permit Rest Periods**

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Ms. Jacobsen and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 7-2001. Warby Parker failed to authorize and permit its employees to take required rest periods. Warby Parker consistently failed to authorize and permit Ms. Jacobsen and other similarly-situated individuals to take rest breaks because Ms. Jacobsen and other similarly-situated individuals were given too much work to perform to take rest breaks. When Ms. Jacobsen and other aggrieved employees were able to take rest breaks, Warby Parker failed to authorize and permit Ms. Jacobsen and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Ms. Jacobsen and other aggrieved employees one additional hour of pay at each employee’s regular rate of compensation for each workday a rest period was not authorized and permitted.

## **MATERN LAW GROUP, PC**

August 9, 2023

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### **Failure to Pay Minimum Wages**

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Ms. Jacobsen and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4. Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Ms. Jacobsen and other similarly-situated individuals to work off-the-clock, including requiring, suffering, or permitting Ms. Jacobsen and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Jacobsen and other aggrieved employees; and other methods to be discovered.

Warby Parker's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4.

### **Failure to Pay Overtime Wages**

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Jacobsen and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001. Warby Parker failed to compensate Ms. Jacobsen and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, including but not limited to failing to include all remuneration in the calculation of the regular rate of pay for overtime purposes; requiring, suffering or permitting Ms. Jacobsen and other aggrieved employees to work off-the-clock, including requiring, suffering, or permitting Ms. Jacobsen and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Jacobsen and other aggrieved employees; and other methods to be discovered.

In violation of California law, Warby Parker has refused to perform its obligations to compensate Ms. Jacobsen and other aggrieved employees for all wages earned and all hours worked. Warby Parker's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3.



## **MATERN LAW GROUP, PC**

August 9, 2023

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### **Failure to Timely Pay All Wages Earned**

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Warby Parker required Ms. Jacobsen and other aggrieved employees to work off-the-clock without compensation, including requiring Ms. Jacobsen and other aggrieved employees to work through required meal breaks without compensation. Additionally, Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Warby Parker also failed to pay Ms. Jacobsen and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Warby Parker knew it was required to pay overtime wages, yet on many occasions failed to pay Ms. Jacobsen and other aggrieved employees overtime wages on any payday.

### **Failure to Pay All Wages Due Upon Separation**

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Warby Parker willfully failed to pay accrued wages and other compensation to Ms. Jacobsen and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Warby Parker required Ms. Jacobsen and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Ms.



## **MATERN LAW GROUP, PC**

August 9, 2023

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Jacobsen and other aggrieved employees the proper premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Warby Parker failed and continues to fail to pay the full earned and unpaid wages due to Ms. Jacobsen and other aggrieved employees upon separation.

### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the 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 the employee.

Warby Parker failed to provide Ms. Jacobsen and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Ms. Jacobsen and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 7-2001, § 7.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Ms. Jacobsen and other aggrieved employees lost wages. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the wage statements. As a result, Ms. Jacobsen and other aggrieved employees lost wages. Warby Parker also did not properly calculate the regular rate of pay of Ms. Jacobsen and other aggrieved employees. As a result, Ms. Jacobsen's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

### **Failure to Maintain Required Records**

Warby Parker failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records

## **MATERN LAW GROUP, PC**

August 9, 2023

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showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

### **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Warby Parker failed to indemnify Ms. Jacobsen and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Warby Parker, including but not limited to expenses for cell phone usage, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

### **Failure to Pay Sick Pay at the Regular Rate of Pay**

Labor Code § 246(l)(1)-(3) requires an employer to calculate sick time in the same manner as the regular rate of pay for non-exempt employees. Warby Parker failed to pay Ms. Jacobsen and other aggrieved employees sick leave at the correct rate of pay, including by failing to include all remuneration earned, such as nondiscretionary bonuses, “Special Pay,” “DP Earnings,” and “Ltd Imputed [sic] In” earnings, in the calculation of paid sick time, in violation of Labor Code § 246(l)(1)-(3).

### **Failure to Provide Written Notice of Paid Sick Leave**

Labor Code § 246(i) requires an employer to provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages. Warby Parker failed to provide Ms. Jacobsen and other aggrieved employees written notice that sets forth the amount of paid sick leave available in violation of Labor Code § 246(i).

\*\*\*

This notice is hereby given to Warby Parker and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under

## MATERN LAW GROUP, PC

August 9, 2023

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California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Warby Parker, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

**This notice shall further represent Ms. Jacobsen's reasonable attempt to settle his dispute with Warby Parker prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Warby Parker of Ms. Jacobsen's aforementioned grievances and the proposed remedies as detailed below, while affording Warby Parker reasonable opportunity to meet Ms. Jacobsen's demands.**

Demand is hereby made that Warby Parker shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Warby Parker shall pay Ms. Jacobsen and all other similarly-situated persons employed by Warby Parker at any time during the past 12 months back pay and compensation for the above-referenced violations.

2. Warby Parker shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Warby Parker shall conduct a survey or interview all current and former non-exempt employees in California during the past 12 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Warby Parker shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Warby Parker also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Warby Parker shall reimburse those employees who were forced to pay for any business expenses incurred for Warby Parker's benefit, including but not limited to cell phone.

**MATERN LAW GROUP, PC**

August 9, 2023

Page 9 of 9

6. Warby Parker shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Warby Parker shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Warby Parker shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 7-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the LWDA or Warby Parker require additional information regarding Mr. McCarty's allegations.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC



Matthew W. Gordon

cc: Katie M. Magallanes, Esq. (via U.S. Mail)



**MATERN LAW GROUP, PC**

1230 Rosecrans Avenue, Suite 200  
Manhattan Beach, California 90266  
www.maternlawgroup.com  
Tel: (310) 531-1900 | Fax: (310) 531-1901

August 9, 2023

**Via Online Submission**

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

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Via Certified U.S. Mail – Return**

**Receipt Requested**

Warby Parker Retail, Inc.  
c/o 1505 Corporation  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, California 95833

**Re: Amended Notice Pursuant to California Labor Code § 2699.3**  
**LWDA Case No.: LWDA-CM-960733-23**  
**Employee: Zaven McCarty**  
**Employers: Warby Parker Inc. and Warby Parker Retail, Inc.**

To Whom It May Concern:

This office represents Zaven McCarty (“Mr. McCarty”), who was jointly employed by Warby Parker Inc. and Warby Parker Retail, Inc. (collectively, “Warby Parker”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Mr. McCarty alleges Warby Parker has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Warby Parker in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Warby Parker. Enclosed please find a draft of Mr. McCarty’s proposed complaint, which is incorporated by reference into this notice.

We are investigating a potential representative action on behalf of Warby Parker’s current and former non-exempt employees in the State of California regarding, among other things, the

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following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 7-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224. This notice amends the PAGA claim notice filed by Mr. McCarty on June 8, 2023, LWDA Case No. LWDA-CM-960733-23, to add additional claims regarding Warby Parker's failure to provide written notice of paid sick leave.

The allegations made by Mr. McCarty on behalf of himself and all other similarly-situated current and former non-exempt employees of Warby Parker in the State of California during the one year preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay at the regular rate of pay for each workday a meal period was not provided; employees were not provided one hour of pay at the regular rate of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.<sup>1</sup> Given the overtime, meal period and rest period violations and Warby Parker's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Warby Parker's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

**Failure to Provide Meal Periods**

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

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<sup>1</sup> "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.



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If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. McCarty and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11. Warby Parker failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. McCarty’s and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Warby Parker consistently failed to provide Mr. McCarty and other aggrieved employees meal breaks because Mr. McCarty and other aggrieved employees were given too much work to perform to take meal breaks.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Mr. McCarty and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

### **Failure to Authorize and Permit Rest Periods**

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. McCarty and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 7-2001. Warby Parker failed to authorize and permit its employees to take required rest periods. Warby Parker consistently failed to authorize and permit Mr. McCarty and other similarly-situated individuals to take rest breaks because Mr. McCarty and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. McCarty and other aggrieved employees were able to take rest breaks, Warby Parker failed to authorize and permit Mr. McCarty and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Warby Parker further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Mr. McCarty and other aggrieved employees one additional hour of pay at each employee’s regular rate of compensation for each workday a rest period was not authorized and permitted.

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### **Failure to Pay Minimum Wages**

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. McCarty and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4. Warby Parker failed to pay Mr. McCarty and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. McCarty and other similarly-situated individuals to work off-the-clock, including requiring, suffering, or permitting Mr. McCarty and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. McCarty and other aggrieved employees; and other methods to be discovered.

Warby Parker's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4.

### **Failure to Pay Overtime Wages**

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. McCarty and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001. Warby Parker failed to compensate Mr. McCarty and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, including but not limited to failing to include all remuneration in the calculation of the regular rate of pay for overtime purposes; requiring, suffering or permitting Mr. McCarty and other aggrieved employees to work off-the-clock, including requiring, suffering, or permitting Mr. McCarty and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. McCarty and other aggrieved employees; and other methods to be discovered.

In violation of California law, Warby Parker has refused to perform its obligations to compensate Mr. McCarty and other aggrieved employees for all wages earned and all hours worked. Warby Parker's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3.



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### **Failure to Timely Pay All Wages Earned**

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Warby Parker failed to pay Mr. McCarty and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Warby Parker required Mr. McCarty and other aggrieved employees to work off-the-clock without compensation, including requiring Mr. McCarty and other aggrieved employees to work through required meal breaks without compensation. Additionally, Warby Parker failed to pay Mr. McCarty and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Warby Parker also failed to pay Mr. McCarty and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Warby Parker knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. McCarty and other aggrieved employees overtime wages on any payday.

### **Failure to Pay All Wages Due Upon Separation**

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Warby Parker willfully failed to pay accrued wages and other compensation to Mr. McCarty and other aggrieved employees in accordance with Labor Code §§ 201-203. Because Warby Parker required Mr. McCarty and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr.

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McCarty and other aggrieved employees the proper premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Warby Parker failed and continues to fail to pay the full earned and unpaid wages due to Mr. McCarty and other aggrieved employees upon separation.

### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the 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 the employee.

Warby Parker failed to provide Mr. McCarty and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. McCarty and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 7-2001, § 7.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. McCarty and other aggrieved employees lost wages. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the wage statements. As a result, Mr. McCarty and other aggrieved employees lost wages. Warby Parker also did not properly calculate the regular rate of pay of Mr. McCarty and other aggrieved employees. As a result, Mr. McCarty's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

### **Failure to Maintain Required Records**

Warby Parker failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records

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showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Warby Parker had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, Warby Parker knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Warby Parker had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Warby Parker knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

### **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Warby Parker failed to indemnify Mr. McCarty and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Warby Parker, including but not limited to expenses for cell phone usage, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

### **Failure to Provide Written Notice of Paid Sick Leave**

Labor Code § 246(i) requires an employer to provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. Warby Parker failed to provide Mr. McCarty and other aggrieved employees written notice that sets forth the amount of paid sick leave available in violation of Labor Code § 246(i).

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This notice is hereby given to Warby Parker and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Warby Parker, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

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This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

**This notice shall further represent Mr. McCarty's reasonable attempt to settle his dispute with Warby Parker prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Warby Parker of Mr. McCarty's aforementioned grievances and the proposed remedies as detailed below, while affording Warby Parker reasonable opportunity to meet Mr. McCarty's demands.**

Demand is hereby made that Warby Parker shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Warby Parker shall pay Mr. McCarty and all other similarly-situated persons employed by Warby Parker at any time during the past 12 months back pay and compensation for the above-referenced violations.

2. Warby Parker shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Warby Parker shall conduct a survey or interview all current and former non-exempt employees in California during the past 12 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phone usage, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Warby Parker shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Warby Parker also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Warby Parker shall reimburse those employees who were forced to pay for any business expenses incurred for Warby Parker's benefit, including but not limited to cell phone usage.

6. Warby Parker shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Warby Parker shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Warby Parker shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et*

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*seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 7-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the LWDA or Warby Parker require additional information regarding Mr. McCarty's allegations.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC

A handwritten signature in blue ink, reading "Matthew W. Gordon", with a long horizontal flourish extending to the right.

Matthew W. Gordon

cc: Katie M. Magallanes, Esq. (via U.S. Mail)