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11 McCARTY individually and on behalf of all
12 other aggrieved employees

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

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

16 Plaintiffs,

17 vs.

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

22 Defendants.

CASE NO. **23CV421588**

COMPLAINT FOR:

1. Civil Penalties Under the California Labor Code Private Attorneys General Act of 2004, as a Representative Action (California Labor Code § 2698, *et seq.*)

DEMAND FOR JURY TRIAL

1 relevant statutory period.

2 5. PLAINTIFFS are informed and believe, and thereon allege, that WARBY
3 PARKER INC. is, and at all times relevant hereto was, a corporation organized and existing
4 under the laws of the State of Delaware. PLAINTIFFS are further informed and believe, and
5 thereon allege, that WARBY PARKER INC. is authorized to conduct business in the State of
6 California and does conduct business in the State of California. Specifically, upon information
7 and belief, WARBY PARKER INC. maintains offices and conducts business in the County of
8 Santa Clara, State of California.

9 6. PLAINTIFFS are informed and believe, and thereon allege, that WARBY
10 PARKER RETAIL, INC. is, and at all times relevant hereto was, a corporation organized and
11 existing under the laws of the State of Delaware. PLAINTIFFS are further informed and believe,
12 and thereon allege, that WARBY PARKER RETAIL, INC. is authorized to conduct business in
13 the State of California and does conduct business in the State of California. Specifically, upon
14 information and belief, WARBY PARKER RETAIL, INC. maintains offices and conducts
15 business in the County of Santa Clara, State of California.

16 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
17 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such defendants under fictitious
18 names. PLAINTIFFS are informed and believe, and thereon allege, that each defendant
19 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
20 that PLAINTIFFS and other AGGRIEVED EMPLOYEES' injuries and damages, as alleged
21 herein, were proximately caused by the conduct of such DOE defendants. PLAINTIFFS will
22 seek leave of the court to amend this complaint to allege the true names and capacities of such
23 DOE defendants when ascertained.

24 8. At all relevant times herein, DEFENDANTS were the joint employers of
25 PLAINTIFFS and other AGGRIEVED EMPLOYEES. PLAINTIFFS are informed and believe,
26 and thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos,
27 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
28 related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors,

1 actual or ostensible, of each other. Each defendant was completely dominated by his, her, or its
2 co-defendant, and each was the alter ego of the other.

3 9. At all relevant times herein, PLAINTIFFS and other AGGRIEVED EMPLOYEES
4 were employed by DEFENDANTS under employment agreements that were partly written, partly
5 oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS,
6 and each of them, acted pursuant to, and in furtherance of, their policies and practices of not
7 paying PLAINTIFFS and other AGGRIEVED EMPLOYEES all wages earned and due, through
8 methods and schemes which include, but are not limited to, failing to pay overtime and minimum
9 wages; failing to provide rest and meal periods; failing to pay meal and rest period premiums;
10 failing to properly maintain records; failing to provide accurate itemized wage statements for each
11 pay period; failing to timely pay wages during employment; failing to properly compensate
12 PLAINTIFFS and other AGGRIEVED EMPLOYEES for necessary expenditures; and requiring,
13 permitting or suffering the employees to work off the clock, in violation of the California Labor
14 Code ("Labor Code") and the applicable Industrial Welfare Commission ("IWC") Wage Order.

15 10. PLAINTIFFS are informed and believe, and thereon allege, that each and every
16 one of the acts and omissions alleged herein were performed by, and/or are attributable to, all
17 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
18 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
19 and scope of said agency, employment and/or direction and control.

20 11. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
21 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
22 provision regulating minimum wages or hours and days of work in any order of the Industrial
23 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 12. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
26 Labor Code §§ 2698-2699.5, PLAINTIFFS bring this action on behalf of themselves and all
27 AGGRIEVED EMPLOYEES of DEFENDANTS in the State of California at any time within the
28 period beginning one (1) year and sixty five (65) days prior to the filing of this action, and ending

1 at the time this action settles or proceeds to final judgment (“PENALTY PERIOD”).

2 13. Pursuant to Labor Code § 2699.3, PLAINTIFFS gave written notice by online
3 filing on June 8, 2023 to the California Labor and Workforce Development Agency (“LWDA”)
4 and by certified mail to DEFENDANTS of the specific provisions of the Labor Code and IWC
5 Wage Orders alleged to have been violated, including the facts and theories to support the alleged
6 violations. PLAINTIFFS have not received any response from the LWDA. As PLAINTIFFS
7 have waited more than sixty-five (65) days from the June 8, 2023 postmark date of
8 PLAINTIFFS’S written notice before filing this action, PLAINTIFFS have complied with all of
9 the requirements set forth in Labor Code § 2699.3 to commence a representative action under
10 PAGA.

11 **FACTUAL ALLEGATIONS**

12 **Failure to Provide Required Meal Periods**

13 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 11]**

14 14. At all times relevant herein, as part of DEFENDANTS’ illegal policies and
15 practices to deprive their current and former non-exempt employees all wages earned and due,
16 DEFENDANTS required, suffered or permitted PLAINTIFFS and other AGGRIEVED
17 EMPLOYEES to take less than the 30-minute meal period, or to work through them, and have
18 failed to otherwise provide the required meal periods to PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES pursuant to Labor Code §§ 226.7 and 512 and IWC Order No. 7-2001, § 11.

20 15. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
21 Order No. 7-2001, § 11 by failing to compensate PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES who were not provided with a meal period, in accordance with the applicable IWC
23 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for each
24 workday that a meal period was not provided.

25 **Failure to Provide Required Rest Periods**

26 **[Cal. Labor Code §§ 226.7; IWC Wage Order No. 7-2001, § 12]**

27 16. At all times relevant herein, as part of DEFENDANTS’ illegal policies and
28 practices to deprive their current and former non-exempt employees all wages earned and due,

1 DEFENDANTS failed to provide rest periods to PLAINTIFFS and other AGGRIEVED
2 EMPLOYEES as required under Labor Code § 226.7, and IWC Wage Order No. 7-2001, § 12.

3 17. DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No. 7-
4 2001, § 12 by failing to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES who were not
5 provided with a rest period, in accordance with the applicable IWC Wage Order, one additional
6 hour of compensation at each employee's regular rate of pay for each workday that a rest period
7 was not provided.

8 **Failure to Pay Overtime Wages**

9 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

10 18. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 7-2001, § 3,
11 DEFENDANTS are required to compensate PLAINTIFFS and other AGGRIEVED
12 EMPLOYEES for all overtime, which is calculated at one and one-half (1 ½) times the regular
13 rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per
14 week, and for the first eight (8) hours on the seventh consecutive workday, with double time for
15 all hours worked in excess of twelve (12) hours in any workday and for all hours worked in
16 excess of eight (8) hours on the seventh consecutive day of work in any workweek.

17 19. PLAINTIFFS and other AGGRIEVED EMPLOYEES are current and former non-
18 exempt employees of DEFENDANTS entitled to the protections of Labor Code §§ 510 and 1194
19 and IWC Wage Order No. 7-2001. During the PENALTY PERIOD, DEFENDANTS failed to
20 compensate PLAINTIFFS and other AGGRIEVED EMPLOYEES for all overtime hours worked
21 as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among
22 other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
23 provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, § 3; requiring,
24 suffering or permitting PLAINTIFFS and other AGGRIEVED EMPLOYEES to work off the
25 clock; requiring, permitting or suffering PLAINTIFFS and other AGGRIEVED EMPLOYEES to
26 work through meal breaks; illegally and inaccurately recording time in which PLAINTIFFS and
27 other AGGRIEVED EMPLOYEES worked; failing to include all remuneration in the calculation
28 of the regular rate of pay for overtime purposes; enforcing an unlawful rounding policy resulting,

1 in practice over time, in the systematic underpayment of overtime wages to AGGRIEVED
2 EMPLOYEES; and other methods to be discovered.

3 20. DEFENDANTS have knowingly and willfully refused to perform their obligations
4 to compensate PLAINTIFFS and other AGGRIEVED EMPLOYEES for all wages earned and all
5 hours worked in violation of Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 7-
6 2001, § 3.

7 **Failure to Pay Minimum Wages**

8 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]**

9 21. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 7-
10 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
11 worked in a payroll period is unlawful.

12 22. During the PENALTY PERIOD and in violation of California Labor Code §§
13 1194 and 1197 and IWC Wage Order No. 7-2001, § 4, DEFENDANTS failed to pay
14 PLAINTIFFS and other AGGRIEVED EMPLOYEES the applicable minimum wages for all
15 hours worked in a payroll period by, among other things: requiring, suffering or permitting
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES to work off the clock; requiring, suffering
17 or permitting PLAINTIFFS and other AGGRIEVED EMPLOYEES to work through meal
18 breaks; illegally and inaccurately recording time in which PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES worked; and other methods to be discovered.

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

21 **[Cal. Labor Code § 204]**

22 23. Pursuant to California Labor Code § 204, for all labor performed between the 1st
23 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
24 employees between the 16th and 26th day of the month during which the labor was performed.
25 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
26 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
27 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
28 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid

1 no later than the payday of the next regular payroll period.

2 24. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
3 to timely pay PLAINTIFFS and other AGGRIEVED EMPLOYEES all the wages for labor
4 performed by the next regular payroll period as required by California Labor Code § 204.

5 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

6 **[Cal. Labor Code §§ 201, 202, 203]**

7 25. Pursuant to Labor Code § 201, 202 and 203, DEFENDANTS are required to pay
8 all earned and unpaid wages to an employee who is discharged. Labor Code § 201 mandates that
9 if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
10 discharge are due and payable immediately.

11 26. Furthermore, pursuant to Labor Code § 202, DEFENDANTS are required to pay
12 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
13 employment, unless the employee provided 72 hours previous notice of his or her intention to
14 quit, in which case the employee is entitled to his or wages at the time of quitting.

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

19 28. During the PENALTY PERIOD and in violation of Labor Code §§ 201 and 202,
20 DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
21 PLAINTIFFS and other AGGRIEVED EMPLOYEES who were discharged or quit his or her
22 employment.

23 **Failure to Maintain Required Records**

24 **[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7]**

25 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
26 policies and practices to deprive PLAINTIFFS and other AGGRIEVED EMPLOYEES of all
27 wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as
28 required under Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 7-2001, § 7,

1 including but not limited to the following records: total daily hours worked by each employee;
2 applicable rates of pay; all deductions; meal periods; time records showing when each employee
3 begins and ends each work period; and accurate itemized statements.

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

5 **[Cal. Labor Code § 226(a); IWC Wage Order No. 7-2001, § 7]**

6 30. During the PENALTY PERIOD, DEFENDANTS routinely failed and continue to
7 fail to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with timely and accurate
8 itemized wage statements in writing showing each employee's gross wages earned, total hours
9 worked, the number of piece-rate units earned and any applicable piece rate if the employee is
10 paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period
11 for which the employee is paid, the name of the employee and only the last four digits of his or
12 her social security number or employee identification number, the name and address of the legal
13 entity or entities employing PLAINTIFFS and other AGGRIEVED EMPLOYEES, and all
14 applicable hourly rates in effect during each pay period and the corresponding number of hours
15 worked at each hourly rate, in violation of California Labor Code § 226(a) and IWC Wage Order
16 No. 7-2001 § 7.

17 31. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally
18 failed to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with timely and accurate
19 itemized wage statements in accordance with Labor Code § 226(a).

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

21 **Duties**

22 **[Cal. Labor Code § 2802]**

23 32. Labor Code § 2802(a) requires an employer to indemnify an employee for all
24 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
25 of her his or her duties, or of his or her obedience to the directions of the employer.

26 33. During the PENALTY PERIOD, DEFENDANTS failed to indemnify
27 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all business expenses and/or losses
28 incurred in direct consequence of the discharge of their duties while working under the direction

1 of DEFENDANTS, including but not limited to expenses for cell phone usage, uniforms, and
2 other employment-related expenses, in violation of Labor Code § 2802.

3 **FIRST CAUSE OF ACTION**

4 **Representative Action for Civil Penalties Under the Labor Code Private Attorneys**

5 **General Act**

6 **[Cal. Labor Code § 2698, *et seq.*]**

7 **(Against All DEFENDANTS)**

8 34. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
9 the allegations in the foregoing paragraphs.

10 35. PLAINTIFFS are “aggrieved employees” within the meaning of Labor Code §
11 2699(c), and proper representatives to bring a civil action on behalf of themselves and other
12 current and former non-exempt employees of DEFENDANTS pursuant to the procedures
13 specified in Labor Code § 2699.3, because PLAINTIFFS were employed by DEFENDANTS and
14 one or more of the alleged Labor Code violations was committed against PLAINTIFFS.

15 36. PLAINTIFFS seek to recover civil penalties through a representative action
16 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
17 Cal.4th 969. Thus, class certification is not required.

18 37. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFFS seek to recover civil
19 penalties from DEFENDANTS in a representative action for the violations set forth above,
20 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510,
21 512, 1174(d), 1194, 1197, 1198, and 2802.

22 38. Pursuant to Labor Code § 2699(a), PLAINTIFFS seek civil penalties for
23 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically
24 provided, including but not limited to the following:

- 25 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
26 DEFENDANTS are subject to a civil penalty in the amount of one hundred
27 dollars (\$100) for the initial violation for each failure to pay each employee
28 and two hundred dollars (\$200) per employee for violations in subsequent

1 pay periods.

- 2 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
3 DEFENDANTS are subject to a civil penalty in the amount of two hundred
4 and fifty dollars (\$250) per aggrieved employee for the initial pay period
5 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
6 employee for violations in subsequent pay periods.
- 7 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
8 on behalf of an employer who violates, or causes to be violated, a section
9 of this chapter or any provision regulating hours and days of work in any
10 order of the Industrial Welfare Commission,” including Labor Code §§ 510
11 and 512, shall be subject to a civil penalty, in addition to any other penalty
12 provided by law, of fifty dollars (\$50) for initial violations for each
13 underpaid employee for each pay period for which the employee was
14 underpaid and one hundred dollars (\$100) for each subsequent violation for
15 each underpaid employee for each pay period for which the employee was
16 underpaid. In addition, PLAINTIFFS seek civil penalties in the amount
17 sufficient to recover unpaid wages owed to AGGRIEVED EMPLOYEES
18 pursuant to Labor Code § 558(a).
- 19 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
20 DEFENDANTS are subject to a civil penalty of five hundred dollars
21 (\$500).
- 22 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
23 paid to any employee a wage less than the minimum fixed by an order of
24 the commission, shall be subject to a civil penalty as follows: for any initial
25 violation that is intentionally committed, one hundred dollars (\$100) for
26 each underpaid employee for each pay period for which the employee is
27 underpaid; and for each subsequent violation of the same offense, two
28 hundred fifty dollars (\$250) for each underpaid employee for each pay

period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

39. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFFS seek such civil penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

40. PLAINTIFFS additionally seeks reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other AGGRIEVED EMPLOYEES, pray for relief against DEFENDANTS as follows:

1. For civil penalties according to proof, including but not limited to civil penalties in the amount sufficient to recover unpaid wages of PLAINTIFFS and other AGGRIEVED EMPLOYEES and all penalties authorized by Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1) and/or any other applicable provisions providing for attorney's fees and costs; and

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1 4. For such further relief that the Court may deem just and proper.

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3 DATED: August 24, 2023

Respectfully submitted,

4 MATERN LAW GROUP, PC

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6 By:



7 MATTHEW J. MATERN
8 MATTHEW W. GORDON
9 VANESSA M. RODRIGUEZ
10 Attorneys for Plaintiffs
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DATED: August 24, 2023

MATERN LAW GROUP, PC

Matthew W. Gordon

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