

Robert S. Arns, State Bar No. 65071 (rsa@arnslaw.com)
Jonathan E. Davis, State Bar No. 191346 (jed@arnslaw.com)
Shounak S. Dharap, State Bar No. 311557 (ssd@arnslaw.com)
Katherine A. Rabago, State Bar No. 333374 (kar@arnslaw.com)
THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

Attorneys for Plaintiffs

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Case #21CV383976
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

NIKLAS MILES GOODMAN, Individually
and on Behalf of All Other Similarly Situated
Employees,

Plaintiffs,

v.

BOBA GUYS, INC.; and DOES 1 through
100, Inclusive,
Defendants.

Case No. 21CV383976

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES [C.C.P.
§ 382]**

COMPLAINT FOR VIOLATIONS OF:

1. Violation of Lab. Code §§ 210, 216, 1194, 1197
2. Violation of Lab. Code §§ 204, 510, 1198
3. Violation of Lab. Code §§ 226.7, 512
4. Violation of Lab. Code §§ 226, 1174
5. Violation of Bus. & Prof. Code §§ 17200, *et seq.* – Unlawful Business Acts and Practices
6. Violation of Bus. & Prof. Code §§ 17200, *et seq.* – Unfair Business Acts and Practices
7. Representative Action for Civil Penalties Under Labor Code §§ 2699, *et seq.*

AMOUNT EXCEEDS \$75,000

1 Plaintiff NIKLAS MILES GOODMAN, on behalf of himself and all others similarly
2 situated, brings this action against Defendant BOBA GUYS INC. (“Boba Guys”); and Does 1
3 through 100 (collectively “Defendants”), and alleges, upon information and belief, except as to his
4 own actions, the investigation of his counsel, and the facts that are a matter of public record, as
5 follows:

6 1. Plaintiff brings this action to obtain damages and restitution, as well as injunctive
7 and other relief, individually and on behalf of a proposed class defined below (“Class”).

8 2. As alleged herein, putative class members are current and former employees of
9 Boba Guys who were wrongfully deprived of wages and overtime compensation, meal and rest
10 breaks, accurate wage statements, and other rights guaranteed under California law. Defendants
11 wrongfully encouraged their employees to claim that they had taken meal periods and rest periods
12 or skip breaks all together in order to staff their restaurants. Defendants are aware that employees
13 work uncompensated hours to provide sufficient service and to meet customer demand during store
14 hours. Defendants even went so far as to mandate employees to sign agreements waiving their
15 meal and rest breaks. Defendants also directed employees, some of which are minors, to work
16 more than 8 hours per day and/or 40 hours per week without paying them overtime wages in
17 violation of California law.

18 3. Plaintiff asserts claims individually and collectively under the Labor Code §§ 204,
19 210, 216, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2699 and the Business & Professions
20 Code § 17200.

21 4. Plaintiff seeks actual and compensatory damages, civil penalties, restitution,
22 equitable relief, costs and expenses of litigation, including attorneys’ fees, and all additional and
23 further relief that may be available and that the Court may deem appropriate and just under all of
24 the circumstances.

25 JURISDICTION AND VENUE

26 5. This class action is brought pursuant to Section 382 of the California Code of Civil
27 Procedure and seeks to remedy Defendants’ violations of state law, including the Labor Code,
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Civil Code, Unfair Competition Law (“UCL”), and orders promulgated by the Industrial Welfare Commission (“IWC” or “IWC Orders”), arising from and related to Defendants’ failure to provide meal and rest periods and to pay owed and overtime wages, as well as related misconduct.

6. Venue is proper in this Court because, *inter alia*, Defendants engage and perform business activities in Santa Clara County. Class members regularly perform work in California and many of the acts complained of herein occurred in the judicial district of Santa Clara County.

PARTIES

7. Plaintiff is a California resident who is directly employed by Boba Guys Inc. in Santa Clara County. Plaintiff Goodman has been employed as a “Bobarista” (a boba barista) by Boba Guys Inc. from September 2019 to present at the Boba Guys located at 855 El Camino Real #120 in Palo Alto, California. During the course of his employment by Defendants, Plaintiff was routinely required to work without being provided thirty-minute meal breaks, as required by California law. Further, Plaintiff was required to work in excess of eight hours per day and/or forty hours per week without receiving overtime compensation.

8. Defendant Boba Guys, Inc. is a California corporation with its principal place of business located at 245 Visitacion Avenue in Brisbane, California. Plaintiff is informed and believes that Defendant Boba Guys Inc. and Does 1 through 25, inclusive, regularly conduct business in the State of California, and directly own, license, operate, administer, manage, direct, or control sixteen (15) restaurant stores in the State of California. Boba Guys’ restaurant chain sells and produces specialty food and beverages in its stores across the State of California.

9. The true names and capacities of DOES 1 through 25, inclusive, are unknown to Plaintiff who sues such Defendants by use of such fictitious names. Plaintiff will amend this complaint to add the true names when they are ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is legally responsible for the occurrences herein alleged, and that Plaintiff’s and the Class’s damages as herein alleged were proximately caused by their conduct.

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CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action pursuant to Code of Civil Procedure, Section 382, on behalf of themselves and the following Class:

All persons who were employed by Defendant as Bobaristas, or who occupied similar roles under different jobs titles, from July 1, 2017 to the present. Excluded from this Class are Defendants and the Judge to whom this case is assigned.

Plaintiff reserves the right to amend this Class definition if discovery or further investigation demonstrate that the Class should be expanded or otherwise modified.

11. **Numerosity of the Class.** The members of the Class are so numerous that joinder of all members would be impracticable. The precise number of members of the Class and their addresses are presently unknown to Plaintiff. The precise number of persons in the Class and their identities and addresses may be ascertained from Defendants' records. If deemed necessary by the Court, members of the Class may be notified of the pendency of this action by mail, supplemented by published notice.

12. **Existence of Predominance of Common Questions of Fact and Law.** There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether Defendants failed to pay Plaintiff and the Class overtime compensation due to them, in violation of California law;
- b. Whether Defendants failed to provide Plaintiff and the Class with meal periods due to them, in violation of California law;
- c. Whether Plaintiff and the Class were required to work hours in excess of eight hours a day or forty hours per week without compensation for said hours worked;
- d. Whether Defendants failed to pay Plaintiff and the Class for all hours of work performed in violation of California law without compensation for said hours worked;
- e. Whether Defendants' conduct violates the Labor Code;

- 1 f. Whether Defendants' conduct violates Business and Professions Code
2 Section 17200;
- 3 g. Whether Defendants' conduct otherwise violates California law; and
- 4 h. Whether, as a result of Defendants' misconduct, Plaintiffs and the Class are
5 entitled to damages, restitution, equitable relief and other damages and
6 relief, and, if so, the amount and nature of such relief.

7 13. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class.
8 Plaintiff has no interests antagonistic to those of the Class and is not subject to any unique defenses.

9 14. **Adequacy.** Plaintiff will fairly and adequately protect the interests of all members
10 of the Class and has retained attorneys experienced in class action and complex litigation.

11 15. **Superiority.** A class action is superior to all other available methods for the fair
12 and efficient adjudication of this controversy for, *inter alia*, the following reasons:

- 13 a. It is economically impractical for members of the Class to prosecute
14 individual actions;
- 15 b. The Class is readily definable;
- 16 c. Prosecution as a class action will eliminate the possibility of repetitious
17 litigation; and
- 18 d. A class action will enable claims to be handled in an orderly and expeditious
19 manner, will save time and expense, and will ensure uniformity of
20 decisions.

21 16. Plaintiff does not anticipate any difficulty in the management of this litigation.

22 **FACTUAL ALLEGATIONS**

23 17. At all times during their employment with Defendants, Plaintiff and the Class were
24 employees of Defendants in that Defendants directly and indirectly exercised control over their
25 wages, hours worked, and conditions of employment. Defendants formulated and implemented a
26 corporate policy that caused employees' supervisors and district managers of Defendants' stores
27 to direct employees to work off the clock, more than 8 hours per day or 40 hours per week without
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1 overtime pay, and for periods of more than 5 hours per day with no meal break of at least thirty
2 minutes.

3 18. Plaintiff and the Class are “Bobaristas” employed to prepare beverages and foods
4 ordered by customers at the stores in which they work. Their duties also include cleaning dishes,
5 taking orders, cashier operation, monitoring inventory, sanitation and general store maintenance.

6 19. In order to properly serve customers, Bobaristas must work during meal periods in
7 order to continue services like taking and preparing orders. Employees are also commonly required
8 to work after their assigned shifts are over in order to complete, *inter alia*, cleaning, sanitation,
9 and inventory tasks.

10 20. Plaintiff and the Class perform work off-the-clock because the duties of their jobs
11 require it. Defendants demand that employees accomplish far more than is possible during their
12 shifts, but Defendants concurrently tell employees that overtime is not authorized. Thus, to retain
13 their jobs, employees are required to work uncompensated overtime hours.

14 21. Plaintiff’s direct supervisor and district manager know that employees work during
15 break and meal periods as well as off the clock, including overtime, to complete their regularly
16 scheduled shifts.

17 22. Defendants do not keep any timekeeping records of the time spent by employees
18 working off-the-clock; nor do they keep records of missed meal periods.

19 23. Plaintiff and other class members were required to sign agreements waiving their
20 meal periods during shifts. Plaintiff and Class members were pressured to waiving their meal
21 periods. Specifically, management intimidated that any individual who did not sign the meal break
22 waiver would be hurting the team. Plaintiff not only forfeited meal breaks, but also payment for
23 his overtime work. Requesting pay for all hours actually worked hurts the Defendants’ bottom line
24 and is not tolerated.

25 24. Defendants imposed requirements and obligations on Plaintiff and the Class that
26 routinely require Plaintiff and the Class to work in excess of eight hours per day and forty hours
27 per week. Employees are also expected to work beyond their regular shifts, after clocking out, in
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1 order to clean up and close shop for the day. As a result of a corporate policy, Plaintiff and the
2 Class have routinely worked, and continue to work, in excess of eight hours per day and forty
3 hours per week.

4 25. During the course of their employment with Defendants, Plaintiff worked in excess
5 of five hours a day during which he received no meal breaks and for which they were not properly
6 compensated.

7 26. Defendants have consistently instructed Plaintiff and the Class over the course of
8 their employment to forgo meal periods and rest periods without compensation. As such,
9 Defendants have not complied with their obligation to provide meal periods and rest periods as
10 required by the Labor Code.

11 27. Boba Guys executives routinely hosted “town hall” meetings to discuss concerns
12 raised by Defendants’ employees. During these meetings, Plaintiff observed Class members raise
13 the aforementioned concerns regarding Defendants’ failure to properly compensate its
14 employees. Despite this knowledge, Defendants willfully continued its violations of the Labor
15 Code during the Class period.

16 **FIRST CAUSE OF ACTION**
17 **UNPAID WAGES**
18 **(Violation of Labor Code §§ 210, 216, 1194, 1197)**

19 28. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if
20 set forth in detail herein.

21 29. Defendants have violated and continue to violate Labor Code §§ 216, 1194, and
22 1197 by willfully refusing to pay wages – including the benefits described above – due and payable
23 to Plaintiff and the Class. As more fully set forth above, Plaintiff and the Class have worked
24 without being appropriately compensated for hours worked.

25 30. Equally, Defendants denied that any wages due for work in excess of forty hours
26 per week or eight hours per day were due to be paid to Plaintiff and the Class even though
27 Defendants knew that under any set of circumstances or facts, Plaintiff and the Class were entitled
28 to be paid for each hour that they worked. Defendants have falsely denied and refused and continue

1 to deny falsely and refuse payment for purposes of securing a material economic benefit to
2 themselves and with the intent to annoy, harass, oppress, hinder, and defraud Plaintiff and the
3 Class.

4 31. Plaintiff and the Class are entitled to recover unpaid wages and Defendants are
5 subject to penalty for their failure to make payments under Labor Code § 210.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME WAGES**
8 **(Violation of Labor Code §§ 204, 510 & 1198)**

9 32. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if
10 set forth in detail herein.

11 33. Plaintiff and the Class have been and are expected to regularly work in excess of
12 eight hours per day and forty hours per week. Plaintiff and the Class have regularly worked, and
13 continue to regularly work, in excess of eight hours per day or forty hours per week.

14 34. At all relevant times, Defendants failed to pay Plaintiff and the Class wages when
15 due, as required by Labor Code §§ 204, 510 & 1198.

16 35. Such a pattern, practice and uniform administration of a corporate policy designed
17 to deprive employees of compensation, as described herein, is unlawful and creates an entitlement
18 to recovery by Plaintiff and the Class, in a civil action, for the unpaid balance of the amount of
19 overtime and other compensation, including interest thereon, civil penalties, including, but not
20 limited to, penalties available under Labor Code §§ 210 and 1197.1, reasonable attorneys' fees and
21 costs of suit, as well as the assessment of any other statutory penalties, including waiting time
22 penalties, against Defendants.

23 **THIRD CAUSE OF ACTION**
24 **FAILURE TO PROVIDE MEAL PERIODS**
25 **(Labor Code §§ 226.7 & 512)**

26 36. Plaintiff hereby realleges and incorporates the above allegations by reference as if
27 set forth fully herein.
28

1 37. Defendants have required and continue to require Plaintiff and the Class to work
2 during meal or rest periods of more than 5 hours per day with no provision of a meal period of at
3 least 30 minutes.

4 38. Plaintiff and the Class were not properly provided with meal periods as required by
5 California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Orders Nos.
6 4 and 5.

7 39. As a result of Defendants' conduct, Plaintiff and the Class are entitled to all
8 monetary and other damages permitted under the Labor Code and any other applicable law,
9 including, but not limited to, civil penalties pursuant to Labor Code §§ 558 and 1197.1.

10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PROPERLY REPORT PAY**
12 **(Labor Code §§ 226 & 1174)**

13 40. Plaintiff hereby realleges and incorporates the above allegations by reference as if
14 set forth fully herein.

15 41. At all relevant times, Defendants failed to keep accurate records of the hours
16 worked by Plaintiff and the Class in violation of Labor Code §§ 226 & 1174.

17 42. At all relevant times, Defendants failed to provide Plaintiff and the Class with
18 accurate records of pay indicating the hours worked and/or the wages paid for the hours worked.
19 In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information
20 regarding state and federal deductions were provided to Plaintiff and the Class.

21 43. As a result of Defendants' conduct, Plaintiff and the Class are entitled to all
22 monetary and other damages permitted under the Labor Code and any other applicable law,
23 including, but not limited to, civil penalties pursuant to Labor Code § 1174.5.

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATION OF THE UCL – UNLAWFUL BUSINESS ACTS AND PRACTICES**
26 **(Bus. & Prof. Code §§ 17200, et seq.)**

27 44. Plaintiff hereby realleges and incorporates the above allegations by reference as if
28 set forth fully herein.

1 45. Business & Professions Code §§ 17200 *et seq.* prohibits acts of “unfair
2 competition” which is defined by Business & Professions Code § 17200 as including “any
3 unlawful, unfair or fraudulent business act or practice.” Defendants’ conduct, as described above,
4 constitutes unlawful business acts and practices.

5 46. Defendants have violated and continue to violate Business & Professions Code §
6 17200’s prohibition against engaging in “unlawful” business acts or practices by, *inter alia*:

- 7 a. Violating, and continuing to violate, Labor Code §§ 216, 1194 & 1197, as
8 set forth above;
- 9 b. Violating, and continuing to violate, Labor Code §§ 204, 510 & 1198, as set
10 forth above;
- 11 c. Violating, and continuing to violate, Labor Code §§ 226.7 & 512, as set
12 forth above;
- 13 d. Violating, and continuing to violate, Labor Code §§ 226 & 1174, as set forth
14 above;
- 15 e. Violating, and continuing to violate, Labor Code § 206.5, as set forth above;
16 and
- 17 f. Violating, and continuing to violate, Labor Code §§ 201, 202 & 203, as set
18 forth above.

19 47. Plaintiff and the Class have suffered injury in fact and lost money and/or property
20 as a result of Defendants’ unlawful business acts and practices by, *inter alia*, being deprived paid
21 meal and rest periods and of compensation for all hours worked including overtime.

22 48. By and through its unlawful business practices and acts described herein,
23 Defendants have obtained valuable services from Plaintiff and the Class and have deprived
24 Plaintiff and the Class of valuable rights and benefits guaranteed by law, all to their detriment.

25 49. As a result of Defendants’ violations of the Business and Professions Code section
26 17200, Plaintiff and the Class seek an order of this Court enjoining Defendants’ continued
27 violations. Plaintiff and the Class also seek an order for restitution, injunctive relief and all other
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1 relief allowed under the UCL, including interest and attorneys' fees pursuant to, *inter alia*, Cal.
2 Code of Civ. Proc. § 1021.5.

3 **SIXTH CAUSE OF ACTION**
4 **VIOLATION OF THE UCL – UNFAIR BUSINESS ACTS AND PRACTICES**
5 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

6 50. Plaintiff hereby reallege and incorporate the above allegations by reference as if set
7 forth fully herein.

8 51. Defendants' acts and practices, as described above, constitute unfair business
9 practices within the meaning of Business & Professions Code, §§ 17200, *et seq.*

10 52. Plaintiff and the Class suffered a substantial injury in fact resulting in the loss of
11 money or property by virtue of Defendants' conduct.

12 53. Defendants' conduct does not benefit workers or competition. Indeed, the injury to
13 Plaintiff and the Class as a result of Defendants' conduct is substantial and far greater than any
14 alleged countervailing benefit.

15 54. Plaintiff and the Class could not have reasonably avoided the injury each of them
16 suffered.

17 55. The gravity of the consequences of Defendants' conduct as described above
18 outweighs any justification, motive or reason therefore, is immoral, unethical, oppressive,
19 unscrupulous, and is contrary to the public welfare since it transgresses civil statutes of the State
20 of California designed to protect workers from exploitation.

21 56. Plaintiff and the Class have suffered injury in fact and lost money and/or property
22 as a result of Defendants' unfair business acts and practices by, *inter alia*, being deprived paid
23 meal and rest periods and of compensation for all hours worked including overtime.

24 57. By and through its unfair business practices and acts described herein, Defendants
25 have obtained valuable services from Plaintiff and the Class and have deprived them of valuable
26 rights and benefits guaranteed by law, all to their detriment.

27 58. As a result of Defendants' violations of the Business and Professions Code section
28 17200, Plaintiff seeks an order of this Court enjoining Defendants' continued violations. Plaintiff

1 also seeks an order for restitution, disgorgement, and all other relief allowed under the UCL,
2 including interest and attorneys' fees pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

3 **SEVENTH CAUSE OF ACTION**
4 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES**
(Labor Code § 2699, *et seq.*)

5 59. Plaintiff hereby realleges and incorporates the above allegations by reference as if
6 set forth fully herein.

7 60. Plaintiff hereby incorporates the claims listed in Plaintiff's July 1, 2021 PAGA
8 letter attached herein as Exhibit 1.

9 61. Plaintiff has complied with requirements of Labor Code § 2699.3, by providing the
10 Division of Labor Standards Enforcement and Defendant with written notice via online submission
11 to the State of California Labor and Workforce Development Agency of all violations of the Labor
12 Code alleged by Plaintiff and enumerated in Labor Code 2699.5.

13 62. Specifically, in addition to the Labor Code violations alleged herein, Plaintiff
14 alleges the following violations:

- 15 • Defendant failed to pay employees due wages in a timely fashion for their work,
16 including overtime and meal/rest break premiums in violation of Labor Code
17 §§ 210, 216, 1194, and 1197;
- 18 • Defendant failed to pay employees overtime wages in violation of Labor Code
19 §§ 204, 510, and 1198;
- 20 • Defendant failed to provide meal and/or rest periods to its employees in
21 violation of Labor Code §§ 226.7 and 512;
- 22 • Defendant failed to properly report pay of its employees in violation of Labor
23 Code §§ 226 and 1174; and
- 24 • Defendant required employees to execute a release of claim on account of
25 wages due in violation of Labor Code § 206.5.

26 63. Pursuant to Labor Code § 2699, all civil penalties otherwise recoverable for
27 vioaltions of the Labor Code which could be assessed and collected by the Labor and Workforce
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1 Development Agency, or any of its departments, divisions, commissions, boards, agencies, or
2 employees, for a violation of the Labor Code, may be recovered through a civil action by an
3 aggrieved employee in an action brought on his or her behalf or on behalf of others similarly
4 situated.

5 64. As a result of Defendant's violations, Plaintiff is entitled to all civil penalties
6 available pursuant to the California Labor Code, as well as attorneys' fees and costs as authorized
7 by Labor Code § 2699(g).

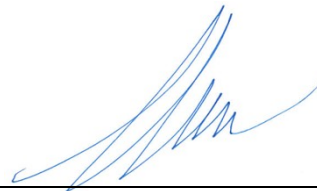
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 3 A. An order certifying this case as a class action and appointing Plaintiff BACA and
4 her counsel to represent the Class;
- 5 B. For actual and compensatory damages according to proof pursuant to the Labor
6 Code, Civil Code, applicable IWC Orders and all other applicable laws and
7 regulations;
- 8 C. For restitution and disgorgement to the extent permitted by applicable law;
- 9 D. For civil and statutory penalties available under applicable law;
- 10 E. For pre-judgment and post-judgment interest;
- 11 F. For an award of attorneys' fees, costs and expenses as authorized by applicable law;
12 and
- 13 G. For such other and further relief as this Court may deem just and proper.

14 **JURY DEMAND**

15 Plaintiffs demand a trial by jury on all causes of action so triable.

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18 Robert S. Arns, State Bar No. 65071
19 Jonathan E. Davis, State Bar No. 191346
20 Shounak S. Dharap, State Bar No. 311557
21 Katherine A. Rabago, State Bar No. 333374
22 **THE ARNS LAW FIRM**
23 515 Folsom Street, 3rd Floor
24 San Francisco, CA 94105
25 Tel: (415) 495-7800
26 Fax: (415) 495-7888

27 Attorneys for Plaintiffs

EXHIBIT 1

ATTORNEYS

Robert S. Arns
 Jonathan E. Davis*
 Zachariah D. Hansen
 Robert C. Foss
 Shounak S. Dharap
 Katherine A. Rabago
 Juan C. Flores
 Michael Langton**

Investigator

Jerry Lambert

* Licensed to practice in Nevada and California
 ** Licensed to practice in Nevada only

**California Office:**

515 Folsom Street
 3rd Floor
 San Francisco, CA 94105
 Tel: 415-495-7800
 Fax: 415-495-7888
 ssd@arnslaw.com

July 1, 2021

**VIA ONLINE SUBMISSION TO THE STATE OF CALIFORNIA LABOR AND
 WORKFORCE DEVELOPMENT AGENCY**

Labor and Workforce Development Agency
 Department of Industrial Relations
 455 Golden Gate Avenue, 10th Floor
 San Francisco, CA 94102

**Re: Labor Code § 2699.3 Notice of Violations
 Niklas Miles Goodman v. Boba Guys, Inc.**

Dear Sir or Madam,

This correspondence is intended to provide notice to both the California Labor Workforce Development Agency (“LWDA”) and the above-listed Defendants (“Defendants”) pursuant to California Labor Code (“Labor Code”) § 2699.3 of the intent of Niklas Miles Goodman, individually and on behalf of all other similarly situated aggrieved employees of Defendants (“Plaintiff” or “Employees”), to seek, in addition to all other remedies available at law, certain civil penalties under the Labor Code in connection with alleged violations thereunder by Defendants. Plaintiff is concurrently filing a civil class action in Santa Clara Superior Court.

	DESCRIPTION OF VIOLATION	LABOR CODE SECTIONS
1	Failure to Pay Unpaid Wages	210, 216, 1194, 1197
2	Failure to Pay Overtime Wages	204, 510, 1198
3	Failure to Provide Meal Periods	226.7, 512
4	Failure to Properly Report Pay	226, 1174
5	Execution of Release of Claim on Account of Wages Due	206.5
6	Waiting Time Penalties	201, 202, 203

I. Factual Background (Labor Code § 2699.3(a)(1))

Plaintiffs are “Bobaristas”—boba baristas—employed by Defendant to prepare beverages and foods ordered by customers at the stores in which they work. Their duties also include

Please Respond to California Office**Nevada Office:**

801 Riverside Drive
 Reno, NV 89503
 Tel: 775-324-2723
 Fax: 775-329-7447

cleaning dishes, taking orders, cashier operation, monitoring inventory, sanitation, and general store maintenance.

In order to properly serve customers, Bobaristas must work during meal periods and rest periods in order to continue services like taking and preparing orders. Employees are also commonly required to clock in early and work after their assigned shifts are over in order to complete their assigned tasks, including, *inter alia*, cleaning, sanitation, and inventory. Employees are pressured to sign documents waiving their meal breaks for shifts under six hours under the intimation by management that failure to waive a meal break will be harmful to the team.

As discussed above, employees routinely preform off-the-clock work due to the requirements of their jobs. Defendant demands that employees accomplish far more than is possible during their shifts, but concurrently inform employees that overtime is not authorized. Thus, to retain their jobs, employees are required to work uncompensated hours. Moreover, Defendants do not keep any records of the time spent by employees working off-the-clock; not do they keep records of missed meal periods.

Critically, Boba Guys knew of its wage and hour violations but continued to willfully continue its unlawful practices. At various companywide town hall meetings hosted by Boba Guys executives, numerous employees raised concerns regarding Defendant's failure to properly compensate its employees. However, these complaints were ignored and unaddressed.

Accordingly, Plaintiff seeks civil penalties against Defendants for their violations of the following sections of the Labor Code.

II. Legal Theories (Labor Code § 2699.3(a)(1))

Based on, *inter alia*, the foregoing, Plaintiffs allege that Defendants violated numerous provisions of the Labor Code, as follows:

1. Defendants' Failure to Pay Unpaid Wages (Labor Code §§ 210, 216, 1194, 1197)

Labor Code § 204 establishes the fundamental right of all employees in the state of California to be paid wages in a timely fashion for their work, including any overtime. Labor Code § 510 defines a day's work as eight hours and states that any work in excess of eight hours in one workday and any work in excess of forty hours in any one work week must be compensated at the rate of no less than one and one-half times the regular rate of pay.

Plaintiff and employees worked without being appropriately compensated for the total hours they worked when they skipped meal and rest breaks or worked more than eight hours in a shift. As a result of Defendants' failure to pay all wages owed in violation of these sections of the Labor Code, in addition to other remedies, Plaintiffs will seek to recover all civil penalties

available for these violations including, but not limited to, penalties available under Labor Code §§ 203, 210, 1194, and 1197.1.

2. Defendants' Failure to Pay Overtime Wages (Labor Code §§ 204, 510, 1198)

Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission ("IWC") or under conditions prohibited by IWC Wage Orders. Under Labor Code § 1199, it is a misdemeanor for an employer to cause an employee to work under conditions of labor prohibited by the IWC. IWC Order No. 5, which applies to Plaintiff's employment, provides for payment of overtime wages equal to 1.5 times an employee's regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, 2 times an employee's regular rate of pay. Labor Code § 510 also defines a day's work as 8 hours and states that any work in excess of 8 hours in a workday and any work in excess of 40 hours in a work week must be compensated at the rate of no less than 1.5 times the regular rate of pay.

Plaintiff alleges he and employees worked for more than 8 hours in a day and more than 40 hours in a week but was denied overtime compensation at 1.5 times his regular rate of pay. Defendants' failure to pay overtime wages is in violation of Labor Code §§ 510, 1194, and 1198.

3. Defendants' Failure to Pay Wages for Meal Periods and Rest Periods (Labor Code §§ 226.7, 512, 558, 1197.1)

Labor Code § 512 provides, in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.... An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes....

Labor Code § 226.7 provides as follows:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Industrial Welfare Commission Wage Order Nos. 4 and 5, §§ 11 and 12, respectively, provide in pertinent parts:

11. Meal Periods

(A) No employer shall employ any persons for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes [...].

[...]

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

12. Rest Periods

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (1) minutes net rest time per four (4) hours or major fraction thereof.

[...]

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each work day that the rest period is not provided.

Plaintiff alleges that he and employees were not provided meal or rest periods, as required by California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Orders Nos. 4 and 5, or otherwise compensated for skipped rest or meal periods. Further, Defendants encouraged and instructed Plaintiff and employees to waive breaks without compensation when they worked in excess of five hours. As such, Plaintiff asserts that Defendants' conduct violated the Labor Code, including, but not limited to, Labor Code §§ 558 and 1197.1, and Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

4. Defendants' Failure to Properly Report Pay (Labor Code §§ 226, 1174)

Plaintiff alleges that Defendants did not provide accurate pay stubs indicating the hours worked or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and federal deductions were provided to employees. This failure is in violation of Labor Code §§ 226 and 1174. As such, Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

5. Defendants' Requiring Execution of Release of Claim or Right on Account of Wages Due (Labor Code § 206.5)

Labor Code Section 206.5 provides, in pertinent part:

(a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. [...]

(b) For purposes of this section, "execution of a release" includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.

Plaintiff alleges that Defendants violated Labor Code § 206.5 by requiring employees to sign agreements waiving meal and rest breaks as a condition of continued employment. Employees were required to accept false pay statements in order to receive payment for work and continue employment by Defendants. Plaintiff and employees were purportedly required to affirm that they had been paid in full for all labor and services, even though they regularly worked well in excess of 8 hours per day or 40 hours per week entitling them to significant additional compensation.

Plaintiff alleges that Defendants' conduct violated the Labor Code and Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

6. Defendants' Waiting Time Penalties (Labor Code §§ 201, 202, 203)

Labor Code §§ 201 and 202 require Defendants to pay employees all wages due immediately at the time of discharge, layoff or resignation made with at least 72 hours' notice and, within 72 hours of resignation made without 72 hours' notice. Labor Code § 203 further provides that if any employer willfully fails to pay compensation promptly upon discharge, as required by §§ 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 workdays.

Defendants have failed to pay all earned wages to aggrieved employees during their employment with Defendants. In addition, aggrieved employees have been discharged, laid off or have resigned without being paid all wages due and owed. As a consequence of Defendants' willful failure to pay wages due to each such employee following separation from employment as required by Labor Code §§ 201 and 202, employees whose employment ended prior to the date of the initial filing of this action and continuing through the date of its final disposition are entitled to recover from Defendants an additional sum as a penalty, pursuant to Labor Code § 203, equal to 30 days' wages per person plus interest for each employee who separated from employment with Defendants, in amounts according to proof at trial.

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Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions regarding Plaintiff's allegations or their intent to seek leave to assert these claims.

Respectfully yours,



Shounak Dharap

cc: **Via Certified Mail**

Boba Guys, Inc.
245 Visitacion Avenue
Brisbane, California 94005

Goodman, et al. v. Boba Guys, et al.
Santa Clara Superior Court Case No. 21CV383976

CERTIFICATE OF SERVICE

I, the undersigned, declare as follows:

I am over the age of 18 years and not a party to, nor interested in, the above-entitled action. I am an employee of The Arns Law Firm, A Professional Corporation, and my business address is 515 Folsom Street, 3rd Floor, San Francisco, CA 94105

On October 29, 2021, I served the following: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES [C.C.P. § 382]**

on all interested parties in the above cause, by:

 X **ONLY BY ELECTRONIC TRANSMISSION** Only by emailing the document(s) to the persons at the e-mail address(es) below pursuant to California Code of Civil Procedure § 1010.6

The envelopes were addressed as follows:

N. William Metke
Senior Attorney
The Mitzel Group, LLP
44 Montgomery Street, Suite 1660
San Francisco, California 94104
Direct: (415) 738-6266
Main: (415) 742-4972 x306
Facsimile: (415) 735-3572
Email: wmetke@mitzelgroup.com,
'kmitzel@mitzelgroup.com';
'sshok@mitzelgroup.com'; 'agates@mitzelgroup.com';
'cbua@mitzelgroup.com'

Boba Guys, Inc.
Agent: Alex Cain
18035 Barrett Avenue
Sonoma, CA 95476

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

Executed on October 29, 2021 at San Francisco, California.


KENIA GUERRERO