

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

DANIEL CONNORS,
and all others similarly situated,

Plaintiffs,

v.

OUHLALA GOURMET CORP.
d/b/a BUDDY FRUITS,
and SCOTT ALLSHOUSE,

Defendants.

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DANIEL CONNORS, by and through his undersigned counsel, hereby files this Complaint and Demand for Jury Trial against Defendants, OUHLALA GOURMET CORP. d/b/a BUDDY FRUITS (“Buddy Fruits”), and SCOTT ALLSHOUSE (“Allshouse”), and states the following:

NATURE OF ACTION

1. Plaintiff was Vice President of Marketing for Defendant. Although Plaintiff was treated as exempt from overtime pay, Defendants had a policy of docking Plaintiff's and other executives' pay in partial-day increments when they exceeded their paid time off (PTO). This policy was in violation of the “salary basis” requirement of the Fair Labor Standards Act, rendering Plaintiff and all others similarly situated non-exempt for the period of time that this docking policy was in effect. Plaintiff and all others

similarly situated who worked in excess of 40 hours per week seek overtime pay, liquidated damages, and attorneys' fees and costs as permitted by the FLSA.

THE PARTIES

2. Defendant Buddy Fruits manufactures and sells squeezable fruit pouches and other ready-to-eat fruit and vegetable-based snacks.

3. Buddy Fruits' principal place of business is in Miami, Florida.

4. At all material times hereto, Buddy Fruits had annual sales revenues in excess of \$500,000.00, and had two or more employees handling, selling or working on goods or materials that have moved in or were produced for commerce.

5. Buddy Fruits sells its products in numerous states as well as in Florida, thereby conducting its business operations across state lines, affecting interstate commerce.

6. Accordingly, at all times material hereto, Buddy Fruits was an "enterprise engaged in commerce" as defined by the FLSA.

7. At all times material hereto, Defendant Allshouse was Buddy Fruits' Chief Executive Officer, exercised control over significant aspects of Buddy Fruits day-to-day functions, hired and fired employees, supervised employees and set their conditions of employment, established the methods and rules under which employees performed their jobs, and determined employees' rates, methods, and timing of compensation, and other matters in relation to employees, and therefore was an "employer" as defined by the FLSA.

JURISDICTION AND VENUE

8. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331 (federal question jurisdiction).

9. Venue is appropriate in this Court, as the violations complained of occurred in Miami, Florida.

FACTS OF CASE

10. Plaintiff was employed by Defendants as Vice President of Marketing from April 4, 2014 to March 17, 2017.

11. Plaintiff worked long hours for Defendants, often more than 40 hours per week, but was never paid overtime wages.

12. Defendants had a policy of docking Plaintiff's pay in partial-day increments when he exceeded his paid time off (PTO).

13. The records, if any, concerning the hours worked by Plaintiff are in the possession and custody of Defendants.

14. The records concerning the sales made by Plaintiff and compensation paid to Plaintiff are in the possession and custody of Defendants.

15. Plaintiff has retained the undersigned counsel to represent him in this action.

COUNT I
FAILURE TO PAY OVERTIME COMPENSATION – FLSA VIOLATION
(AGAINST BOTH DEFENDANTS)

16. Plaintiff adopts and realleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

17. An employer's policy of docking employees' pay in partial-day increments when the employee exceeds his paid time off (PTO) violates the "salary basis" requirement of the FLSA and renders an otherwise exempt employee non-exempt for the period of time in which such policy is in effect.

18. Defendants' docking policy as described above was in effect during the entire period of Plaintiff's employment. Accordingly, Plaintiff was non-exempt during the entire period of his employment and was entitled to be paid time and one-half of his regular rate of pay for each hour worked in excess of forty (40) hours per work week.

19. Defendants knowingly and willfully failed to pay Plaintiff time and one-half of his regular rate of pay for all hours worked in excess of forty (40) per week.

20. By reason of the said intentional, willful and unlawful acts of Defendants, Plaintiff has suffered damages, which he is entitled to recover.

21. As a result of Defendants' willful violations of the FLSA, Plaintiff is also entitled to recover liquidated damages.

22. Pursuant to 29 U.S.C. §216(b), Plaintiff is also entitled to recover all reasonable attorney's fees and costs incurred in this action.

23. Upon information and belief, Defendants applied their unlawful docking policy to other employees whom they treated as exempt, but who were in fact non-exempt. Accordingly, Plaintiff intends to move to certify this case as a collective action pursuant to 29 U.S.C. §216(b).

WHEREFORE, Plaintiff demands judgment against Defendants for the payment of overtime wages, liquidated damages, reasonable attorney's fees and costs of suit, and for all proper relief including prejudgment interest.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on the above claims.

Respectfully submitted,

/s/Richard Tuschman

Richard D. Tuschman, Esq.

Florida Bar No. 907480

E-mail: rtuschman@gtempoymentlawyers.com

2nd E-mail: assistant@gtempoymentlawyers.com

RICHARD D. TUSCHMAN, P.A.

8551 W. Sunrise Boulevard, Suite 303

Plantation, Florida 33322

Telephone: (954) 369-1050

Facsimile: (954) 380-8938

Attorney for Plaintiff

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Daniel Connors

(b) County of Residence of First Listed Plaintiff Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard D. Tuschman, P.A.
8551 W. Sunrise Blvd. #303
Plantation, FL 33322 (954)369-1050

DEFENDANTS

Ouhlala Gourmet Corp. and
Scott Allshouse

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

FLSA
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 5-12-17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**UNITED STATES DISTRICT COURT
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OUHLALA GOURMET CORP.
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Defendants.

SUMMONS IN A CIVIL ACTION

TO: OUHLALA GOURMET CORP. d/b/a BUDDY FRUITS
c/o FIDUCIAL JADE INC. as Registered Agent
990 Biscayne Boulevard
Office 701
Miami, FL 33132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Richard D. Tuschman, Esq.
RICHARD D. TUSCHMAN, P.A.
8551 W. Sunrise Boulevard, Suite 303
Plantation, Florida 33322
Telephone: (954) 369-1050
Facsimile: (954) 380-8938
rtuschman@gtempmentlawyers.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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Defendants.

SUMMONS IN A CIVIL ACTION

TO: SCOTT ALLSHOUSE
c/o BUDDY FRUITS
2655 South Le Jeune Road
Suite 1011
Coral Gables, FL 33134

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Richard D. Tuschman, Esq.
RICHARD D. TUSCHMAN, P.A.
8551 W. Sunrise Boulevard, Suite 303
Plantation, Florida 33322
Telephone: (954) 369-1050
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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Executive Seeks Unpaid Overtime from Buddy Fruits](#)
