

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ADAM MOSTEL and DREW PORTALATIN,
on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

PBG DELIVERY DUDES LLC, a
Florida limited liability company, and
MICHAL SKARZYNSKI, individually,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, ADAM MOSTEL and DREW PORTALATIN, on behalf of themselves and all others similarly situated, by and through undersigned counsel, sue the Defendants, PBG DELIVERY DUDES LLC, a Florida limited liability company, and MICHAL SKARZYNSKI, individually, and for their causes of action, declare and aver as follows:

INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all other similarly situated current and former delivery drivers of Defendants to recover from the Defendants unpaid minimum wages and overtime compensation, liquidated damages, costs and reasonable attorneys' fees, as well as for declaratory and injunctive relief, under the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.* (hereinafter referred to as "the FLSA"), and specifically under 29 U.S.C. § 216(b).
2. Defendants are in the restaurant food delivery service business and employed Plaintiffs, as well as all others similarly situated, within the meaning of the FLSA, to deliver food from restaurants that do not provide delivery services to patrons who order the food through an online system.

3. Skarzynski owns, operates and manages the corporate Defendant, and is active in the day to day management of all aspects of the business.
4. In order to avoid, *inter alia*, paying minimum wages and overtime compensation under the law, Defendants misclassify their delivery drivers as 1099 independent contractors. Instead, the Defendants pay the drivers a range of fifty cents (\$.50) to two dollars (\$2.00) per delivery, plus any tips received from patrons, and often require the delivery drivers to work as much as 50-60 hours per week.

PARTIES

5. Plaintiffs ADAM MOSTEL and DREW PORTALATIN are citizens and residents of Duval County, Florida, and worked for Defendants in Palm Beach County, Florida, within the jurisdiction of this Court.
6. Defendant, PBG Delivery Dudes LLC, is a Florida limited liability company, organized and existing under the laws of Florida, with its principal place of business located at 993 Sanctuary Cove Drive, Palm Beach Gardens, FL 33410. At all times relevant, PBG Delivery Dudes LLC, was engaged in transportation and delivery services in Florida.
7. Defendant, Michal Skarzynski is the owner, operator and/or manager of PBG Delivery Dudes LLC, and controls PBG Delivery Dudes LLC, through day to day management, supplying delivery orders, website/mobile app, and centralizing hiring. Skarzynski resides at 993 Sanctuary Cove Drive, Palm Beach Gardens, FL 33410.

JURISDICTION AND VENUE

8. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and by 29 U.S.C. § 216(b).
9. Based on the corporate Defendant's principal address and place of business, the individual Defendant's residency, and the fact that the acts complained of are within the Southern District of Florida, venue is appropriate in the Southern District pursuant to 28 U.S.C. § 1391(b).

COVERAGE

10. Defendants have more than two employees and generate more than \$500,000.00 in annual revenue.
11. At all times material hereto, Defendants were, and continue to be, engaged in interstate commerce as defined by the FLSA. Indeed, Defendants engage in interstate commerce by employing delivery drivers who use instrumentalities of commerce, including but not limited to processing credit card transactions, use of the telephone and internet, and online ordering through the centralized delivery dudes website.
12. Moreover, at all times material hereto, during their employment with Defendants, Plaintiffs were engaged in interstate commerce. For example, Plaintiffs, and other similarly situated delivery drivers, processed payments from Defendants' customers using a cellular phone-based payment processing method like "Square." Plaintiffs, and other similarly situated delivery drivers, made deliveries from restaurants, including local restaurants and national chains whose food has traveled in interstate commerce.
13. The individual Defendant acted directly and indirectly in the interest of the corporate Defendant, in relation to the Plaintiffs, and similarly situated delivery drivers, with regard to pay classification, pay methodology, pay rates, hours and the terms and conditions of employment. The individual Defendant sets policies and procedures – such as work hours, delivery hours, delivery locations, and participating restaurants – administers the centralized website and social media platforms, and dispatches drivers and distributes orders through the website and email/text message to drivers.
14. Plaintiffs, and other similarly situated delivery drivers, performed a service that was integral to the operation of the Defendants' food delivery business. Indeed, the Defendants' entire business model is economically dependent on the delivery drivers, and the delivery drivers likewise are economically dependent on the Defendants for their livelihood.

15. The additional persons who may become plaintiffs in this action, and who Plaintiffs believe are entitled to notification of the pendency of this action, and of their right to opt-in to this action, are current and former delivery drivers of Defendants, who are or were subject to the payroll practices and procedures described in the paragraphs below, all of whom were employed by the Defendants.
16. At all times pertinent to this Complaint, Defendants failed to comply with 29 U.S.C. § 201-19 in that Plaintiffs and those current and former delivery drivers similarly situated to Plaintiffs, while employed by Defendants and unlawfully misclassified as independent contractors for purposes of avoiding minimum wage and overtime compensation eligibility, performed hours of service for Defendants during one or more workweeks, for which Defendants failed to properly pay minimum wages and overtime premiums.
17. Plaintiffs, and those current and former employees similarly situated to Plaintiffs, are and were unlawfully misclassified as independent contractors. Defendants pay the delivery drivers, including Plaintiffs, fifty cents (\$.50) to two dollars (\$2.00) per delivery “flat fee” for each completed delivery, plus tips.
18. Delivery drivers for Defendants’ business typically work eight (8) hour shifts, though commonly more hours were necessary -- if, for example, a delivery came in right at the end of a shift.
19. During such a typical shift, it is common for a delivery driver to make 6–7 deliveries, such that the delivery drivers make a total of less than the minimum wage (not including tips) for the entire shift, let alone per hour.
20. The federal minimum wage for employees is \$7.25 and the Florida state minimum wage for these same employees currently is \$8.25 per hour. Previously, the Florida state minimum wage ranged from \$8.05 in 2015 to \$8.25 as of January 1, 2018.
21. Plaintiffs did not control their own schedules; rather, they were subject to the schedule of

Defendants and relied on them for all of their business. The same applies for all of Defendants' delivery drivers.

22. Plaintiffs wore Delivery Dudes uniforms during all relevant times during their employment. The same applies for all of Defendants' delivery drivers.
23. Plaintiffs were required to make deliveries assigned to them through a central dispatching system. The same applies for all of Defendants' delivery drivers.
24. In the course of their employment with the Defendants, Plaintiffs, and other current and former delivery drivers similarly situated, worked the number of hours required, many times in excess of forty (40) per workweek, but Defendants did not pay a proper minimum hourly wage nor proper overtime premiums for any hours worked in excess of forty (40).
25. The pay practices of the Defendants, as described in the above paragraphs, violated the FLSA by failing to pay proper minimum wages and overtime compensation to Plaintiffs, and those other current and former delivery drivers similarly situated to Plaintiffs, for those hours worked per workweek, including in excess of forty (40).
26. The pay practices of the Defendants, as described in the above paragraphs, also violated Florida law by failing to pay proper minimum wages to Plaintiffs, and those other current and former delivery drivers similarly situated to Plaintiffs, for those hours worked per workweek.
27. During the three (3) years preceding the filing of this lawsuit, Defendants have (1) employed and continue to employ individuals similarly situated to Plaintiffs (*i.e.* delivery drivers); (2) classified and continue to classify these individuals as 1099 independent contractors; and (3) suffered or permitted to be suffered, with knowledge, hours of service by these individuals, including in excess of forty (40) during one or more workweeks, for which Defendants failed to pay proper minimum wages and/or overtime premiums for those hours worked in excess of forty (40).
28. Each improperly classified (and therefore improperly paid) delivery driver who performed

and/or continues to perform services for Defendants, for any time period during the three (3) years preceding this lawsuit, is entitled to notification of the pendency of this action and of his/her right to consent to becoming a party to this action.

COUNT I - RECOVERY OF UNPAID OVERTIME - FEDERAL LAW (FLSA)

29. Plaintiffs re-aver and re-allege all allegations contained in paragraphs 1 through 28 above as if fully set forth herein.
30. Plaintiffs are entitled to be paid time and one-half for each hour worked in excess of forty (40) per workweek and to have such overtime calculated in accordance with Federal Regulations. All similarly situated employees are similarly owed time and one-half, calculated properly, for those overtime hours they worked and for which they were not properly paid.
31. By reason of the willful acts of the Defendants, all Plaintiffs (Plaintiffs and those similarly situated to them) have suffered damages plus incurred costs and reasonable attorneys' fees.
32. As a result of the Defendants' violation of the Act, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to liquidated damages in an amount equal to that which they are owed as unpaid overtime.

WHEREFORE, Plaintiffs, and those similarly situated to them, who have or will opt-in to this action, demand judgment against Defendants for the overtime compensation payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper.

**COUNT II - RECOVERY OF MINIMUM WAGES -
FEDERAL (FLSA) AND FLORIDA LAW**

33. Plaintiffs re-aver and re-allege all allegations contained in paragraphs 1 through 28 above as if fully set forth herein.
34. Plaintiffs are entitled to be paid the statutory minimum wages for each hour worked per workweek. All similarly situated employees are similarly owed minimum wages, for those

hours they worked and for which they were not properly paid.

35. By reason of the willful acts of the Defendants, all Plaintiffs (Plaintiffs and those similarly situated to them) have suffered damages plus incurred costs and reasonable attorneys' fees.
36. As a result of the Defendants' violation of the Act, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to liquidated damages in an amount equal to that which they are owed as unpaid overtime.

WHEREFORE, Plaintiffs, and those similarly situated to hmm, who have or will opt-in to this action, demand judgment against Defendants for the minimum wages due them for the hours worked by them for which they have not been properly compensated, liquidated damages, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: November 1, 2018
Boca Raton, FL

Respectfully submitted,

/s Daniel R. Levine

DANIEL R. LEVINE, ESQ.

Fla. Bar No. 0057861

E-Mail: DRL@PBL-Law.com

ERICA A. GONSALVES, ESQ.

Fla. Bar No. 122538

E-Mail: EG@PBL-Law.com

Padula Bennardo Levine, LLP

3837 NW Boca Raton Blvd., Suite 200

Boca Raton, FL 33431

Telephone: (561) 544-8900

Facsimile: (561) 544-8999

Counsel for Plaintiff

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

l. (a) PLAINTIFFS ADAM MOSTEL and DREW PORTALATIN, DEFENDANTS PBG DELIVERY DUDES LLC and MICHAL SKARZYNSKI,

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

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)

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel R. Levine, Esq., Padula Bennardo Levine LLP, 3837 NW Boca Raton Blvd., Suite 200, Boca Raton, FL 33431 (561) 544-8900

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

Form with checkboxes for jurisdiction and citizenship options. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid of checkboxes for nature of suit categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding, 2 Removed from State Court, 3 Re-filed, 4 Reinstated or Reopened, 5 Transferred from another district, 6 Multidistrict Litigation Transfer, 7 Appeal to District Judge from Magistrate Judgment, 8 Multidistrict Litigation - Direct File, 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 201, et seq. - violation of the Fair Labor Standards Act LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$1,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE November 1, 2018 SIGNATURE OF ATTORNEY OF RECORD

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ADAM MOSTEL and DREW PORTALATIN,
on behalf of themselves
and all others similarly situated,

Plaintiff(s)

v.

PBG DELIVERY DUDES LLC, a
Florida limited liability company, and
MICHAL SKARZYNSKI, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Michal Skarzynski
as Registered Agent for

PBG DELIVERY DUDES LLC
993 Sanctuary Cove Drive
Palm Beach Gardens, FL 33410

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:

Daniel R. Levine, Esquire
Padula Bennardo Levine, LLP
3837 NW Boca Raton Blvd., Suite 200
Boca Raton, FL 33431
(561) 544-8900

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

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ADAM MOSTEL and DREW PORTALATIN,
on behalf of themselves
and all others similarly situated,

Plaintiff(s)

v.

PBG DELIVERY DUDES LLC, a
Florida limited liability company, and
MICHAL SKARZYNSKI, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Michal Skarzynski
993 Sanctuary Cove Drive
Palm Beach Gardens, FL 33410

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:

Daniel R. Levine, Esquire
Padula Bennardo Levine, LLP
3837 NW Boca Raton Blvd., Suite 200
Boca Raton, FL 33431
(561) 544-8900

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

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ADAM MOSTEL and DREW PORTALATIN,
on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

PBG DELIVERY DUDES LLC, a Florida
limited liability company, and
MICHAL SKARZYNSKI, individually,

Defendants.

_____ /

CONSENT TO JOIN

Plaintiff, Adam Mostel, by and through undersigned counsel, files this his Notice of Consent to Join, as follows:

I consent to opt-in to be a party plaintiff in a lawsuit against, Defendants, PBG DELIVERY DUDES LLC, a Florida limited liability company, and MICHAL SKARZYNSKI, individually, in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).



Signature

ADAM MOSTEL

Dated: October 24, 2018
Boca Raton, FL

Respectfully submitted,

/s Daniel R. Levine

DANIEL R. LEVINE, ESQ.

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Boca Raton, FL 33431

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Facsimile: (561) 544-8999

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ADAM MOSTEL and DREW PORTALATIN,
on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

PBG DELIVERY DUDES LLC, a Florida
limited liability company, and
MICHAL SKARZYNSKI, individually,

Defendants.

CONSENT TO JOIN

Plaintiff, Drew Portalatin, by and through undersigned counsel, files this his Notice of Consent to Join, as follows:

I consent to opt-in to be a party plaintiff in a lawsuit against, Defendants, PBG DELIVERY DUDES LLC, a Florida limited liability company, and MICHAL SKARZYNSKI, individually, in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

Drew Portalatin

Signature

DREW PORTALATIN

Dated: October 31, 2018
Boca Raton, FL

Respectfully submitted,

/s Daniel R. Levine

DANIEL R. LEVINE, ESQ.

Fla. Bar No. 0057861

E-Mail: DRL@PBL-Law.com

ERICA A. GONSALVES, ESQ.

Fla. Bar No. 122538

E-Mail: EG@PBL-Law.com

Padula Bennardo Levine, LLP

3837 NW Boca Raton Blvd., Suite 200

Boca Raton, FL 33431

Telephone: (561) 544-8900

Facsimile: (561) 544-8999

Counsel for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [PBG Delivery Dudes Sued by Ex-Drivers Over Allegedly Unpaid Minimum, OT Wages](#)
