

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

DAR No. _____
Appeals Court No. 2022-P-1122

MATTHEW SUTTON,
on behalf of Themselves
and all others similarly situated,

Plaintiff-Appellee,

v.

JORDAN'S FURNITURE, INC.,

Defendant-Appellant.

ON APPEAL FROM THE SUPERIOR COURT, MIDDLESEX COUNTY

DEFENDANT-APPELLANT JORDAN'S FURNITURE, INC.'S
APPLICATION FOR DIRECT APPELLATE REVIEW

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CORPORATE DISCLOSURE STATEMENT

Defendant-Appellant Jordan's Furniture, Inc. is 100-percent owned by its parent corporation, Berkshire Hathaway, Inc., a publicly traded company.

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. App. P. 11, Defendant-Appellant Jordan's Furniture, Inc. ("Jordan's") respectfully asks the Court to grant direct appellate review. The issues in this appeal concern several important but unsettled, questions of law regarding the manner in which Massachusetts employers may lawfully compensate commissioned retail sales persons who work more than 40 hours in a week or who work on Sundays (or both).

In *Sullivan v. Sleepy's LLC*, 482 Mass. 227 (2019) ("*Sleepy's*"), this Court held that, under the Massachusetts Overtime Statute, M.G.L. c. 151 § 1A, and the Sunday premium pay provision of the Massachusetts Blue Laws, *id.* c. 136, § 6(50), "retail salespeople who are paid entirely in commissions or draws ... are entitled to separate and additional payments of one and one-half times the minimum wage for every hour the employees worked over forty hours or on Sunday," and that, "draws and commissions cannot be retroactively allocated as hourly and overtime wages and Sunday pay[.]" *Id.* at 228. However, *Sleepy's* left unresolved a number of significant questions:

- In calculating the amount of a retail sales employee's weekly commission, may the employer subtract hourly wage payments from the same week in which the commission was earned, where the employer (like Jordan's and unlike Sleepy's) separately, and in addition to commissions: tracks all employee hours worked; makes a separate payment of the minimum hourly wage for all hours worked up to 40 in a workweek; and makes a separate payment of statutory premium pay for all hours worked over 40 and on Sundays?

- Does *Sleepy's* apply retroactively?
- Is 454 CMR § 27.03, on which the *Sleepy's* holding partially rests, unconstitutional?
- Do employees have a private right of action for alleged violations of the Sunday premium pay provision of the Massachusetts Blue Laws?

These are matters of significant importance and public interest. The decision in *Sleepy's* unleashed a torrent of class action litigation against numerous Massachusetts retailers, resulting in the payment, to date, of many tens of millions of dollars in settlements.¹ The *Sleepy's* decision, and the litigation it spawned, also was the impetus for several (ultimately unsuccessful) bills that garnered significant attention, and lobbying efforts, on Beacon Hill. *See, e.g.,* Jon Chesto, *Mass. retailers get potential boost from Senate in fight over commission-based overtime pay*, Boston Globe, July 6, 2021, at D1.

The issues raised by *Sleepy's* have been of particular concern to Jordan's. Jordan's had structured its sales compensation plan in good faith reliance on opinion letters from the Massachusetts Division of Occupational Safety and the Massachusetts Attorney General's Office – the state agencies tasked with interpreting and enforcing, respectively, the Commonwealth's wage and hour laws.

¹ For example, a class action against the Herb Chambers automobile dealerships settled for \$21 million. *See* Jon Chesto, *Auto magnate's accord over disputed pay practice totals \$21m; other employers are fighting in courts to avoid big payouts*, Boston Globe, Feb. 19, 2020, at B6.

Those agencies published their opinion letters, and many employers relied upon them in structuring their compensation systems. However, more than 15 years after the first two of those opinion letters were issued, the *Sleepy's* Court invalidated them – despite acknowledging that, “the opinion letters are less than a model of clarity and may have misled the employers.” *Sleepy's*, 482 Mass. at 233. At the same time, *Sleepy's* provided little guidance on what commission plan structures would pass legal muster.

Sleepy's thus hit Massachusetts retail employers – already dealing with significant disruptions from the COVID pandemic and, now, from decades-high inflation – with a “double whammy”: they were penalized for attempting to conform their pay plans to Massachusetts wage and hour laws as articulated by the very agencies charged with interpreting and enforcing those laws, and have been left in limbo as to how to ensure their pay plans are legally compliant. Given the confusion that *Sleepy's* has generated, the need for clarification so that employers can make rational business decisions on the structure of their compensation plans, and the enormous cost that *Sleepy's* has imposed on the Massachusetts business community, direct appellate review is warranted.

STATEMENT OF PRIOR PROCEEDINGS

Sutton² commenced the action below on June 19, 2019, asserting claims under the Massachusetts Payment of Wages Act (the “Wage Act”), M.G.L. c. 149, § 148 *et seq.*; the Massachusetts Overtime Statute (the “Overtime Statute”), *id.* c. 151, § 1A; and the Sunday pay provision of the Massachusetts Blue Laws (the “Blue Laws”), *id.* c. 136, § 6(50). Specifically, Sutton alleged that Jordan’s compensation plan for commissioned sales employees did not satisfy the requirements stated by this Court in *Sleepy’s*.

On December 22, 2020, the Superior Court (Barry-Smith, J.) certified the following class of plaintiffs:

All individuals whom Jordan’s Furniture, Inc. has employed in the positions of “sales consultant” or “sleep technician,” at one or more of its retail stores located in Massachusetts, during the time period between June 19, 2016 and August 1, 2019 and who worked more than forty hours in any workweek or on any Sunday.

Addendum, at 45.

On June 4, 2021, the parties filed cross-motions for summary judgment. Jordan’s sought summary judgment in its favor on all three counts of the Complaint; Sutton sought summary judgment in his favor, as to liability only, on Count I (Failure to Pay Overtime) and Count II (Failure to Pay Sunday and

² A second plaintiff, Amie Arestani (“Arestani”), who lived and worked in New Hampshire, was subsequently dismissed for lack of standing and is not a party to this appeal.

Holiday Pay). On September 23, 2021, the Superior Court (Sarrouf, Jr., J.) issued its ruling on the parties' summary judgment motions. On Counts I and II, the court found in favor of Sutton, as to liability only. On Count III (requiring employees to work on Sundays in violation of the Blue Laws), the court entered summary judgment in favor of Jordan's, finding that "no private right of action for such a claim exists." *Addendum*, at 61.

While expressly preserving all appellate rights, the parties subsequently reached an agreement on the amount of damages at issue, and on a form of judgment that included all single and mandatory treble damages and pre-judgment interest, both in gross and on a per-class-member basis. The agreed form of judgment was entered on November 1, 2021 (the "Judgment"). *Addendum*, at 63.

On November 11, 2021, Sutton served a Motion to Amend Judgment and Petition for Fees and Costs (the "Fee Petition"), seeking attorneys' fees and costs in excess of one million dollars. On May 10, 2022, the Superior Court (Sarrouf, Jr., J.) allowed the Fee Petition in the amount of \$647,360.00 for attorneys' fees. In calculating this amount, the Superior Court applied a four-times multiplier to the actual attorneys' fees incurred by Sutton as determined by the lodestar method (*i.e.*, \$161,840 times 4).³ *Addendum*, at 71. The parties then agreed on a form of amended judgment incorporating the award of fees and costs (again expressly

³ The Court also awarded \$7,631.98 in costs.

preserving all appellate rights), which was entered on May 13, 2022 (the “Amended Judgment”). *Addendum*, at 72.

Shortly thereafter, the parties discovered that damages for four of the 247 class members had been inadvertently undercalculated. The parties jointly moved for entry of a Second Amended Judgment correcting the calculations for those four employees. On June 8, 2022, the Superior Court (Sarrouf, Jr., J.) allowed the motion and entered the Second Amended Judgment. *Addendum*, at 79.

Jordan’s filed a Notice of Appeal on June 8, 2022. On June 9, 2022, after receiving notice that the Second Amended Judgment had been docketed, Jordan’s filed an Amended Notice of Appeal. On June 16, 2022, Sutton filed a Notice of Cross-Appeal, seeking review of the Superior Court’s ruling on the Fee Petition. The appeal was entered in the Appeals Court on November 21, 2022.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

Jordan’s is a Massachusetts corporation that owns and operates furniture retail stores in Massachusetts and other states. Jordan’s employs sales persons (referred to as Sales Consultants and Sleep Technicians) to work at its stores, selling furniture, bedding, and related products to customers. While Jordan’s sales employees often work on Saturdays and Sundays – which are the busiest days at Jordan’s stores and, consequently, present the greatest opportunity for sales employees to earn commissions – they are rarely scheduled to work overtime.

In 2003, in connection with updating Jordan's commission sales plan documents, Jordan's legal counsel sought an opinion from the Division of Occupational Safety (the "DOS") (currently known as the Department of Labor Standards, or "DLS"), the state agency tasked with interpreting Massachusetts wage and hour laws, regarding how to properly pay overtime and Sunday pay to commissioned sales employees under Massachusetts law. In response, Jordan's legal counsel received two letters from the applicable government agencies (one from the DOS and one from the Attorney General's Office, the agency tasked with enforcing the Commonwealth's wage and hour laws). These two opinion letters provided detailed information regarding the proper method of paying commissioned sales employees (including Sunday and overtime pay). On December 21, 2009, the DOS provided a third opinion letter, again at the request of Jordan's legal counsel, confirming that retail sales employees could be paid on a 100-percent commission basis, as long as the employee's total pay equaled or exceeded the minimum wage and premium pay due for the workweek. These three opinion letters were published by the DOS on its website, and have been relied upon by countless Massachusetts employers since then.

Jordan's also relied on its requested opinion letters in structuring its sales compensation plan, and in continuing to pay sales employees in accordance with that plan. The plan – which was explained, orally and in writing, during training

for new sales employees – had two components. First, Jordan’s tracked sales employees’ hours worked, and paid them, on a weekly basis, the statutory minimum hourly wage for all hours up to 40 in a workweek, plus additional premium pay, at 1.5-times⁴ the minimum hourly wage, for all hours worked over 40 in a workweek and for any hours worked on Sundays. Thus, sales employees’ hourly pay varied from week to week, depending on the number of hours they worked that week, and whether they worked any overtime or Sunday hours. Sales employees were guaranteed and paid these hourly wages, regardless of the amount of weekly commissions they may have earned and been paid in that week.

Second, separate from and in addition to their hourly wages, sales employees were paid weekly commissions. The amount of the weekly commission payment was calculated by applying the commission rate applicable to each type of sale, totaling all commissions earned for that week, and then subtracting an amount equal to that week’s hourly pay. If the result of that calculation was negative, the negative balance was carried forward and subtracted from future commissions, but was never subtracted from the hourly pay. Thus, the commission calculations (including the recovery of any negative amounts) had no impact on the sales

⁴ Effective January 1, 2019, the statutory premium multiple was reduced from 1.5 to 1.4. *See* St. 2018, c. 121, §§ 5, 10. At that time, Jordan’s correspondingly reduced its premium pay multiple to 1.4.

employee's hourly pay, including overtime and Sunday premium pay, which was never reduced.

Each week, sales employees received a detailed paystub, which itemized separately: the number of regular hours worked and the regular hourly pay received; the number of overtime hours worked and the overtime pay received; the number of Sunday hours worked and the Sunday pay received; and the amount of each type of commission pay received. The paystub also showed any negative commission balance that was carried forward from a previous week and recovered from the current week's commission, and any negative commission balance that would be carried forward to the next pay period (if there were not enough commissions earned during that pay period to cover the amount of the negative commissions).

ISSUES OF LAW RAISED BY THE APPEAL

Jordan's appeal presents the following issues of law, all of which were raised and properly preserved in the Superior Court:

1. In calculating the amount of a retail sales employee's weekly commission, may the employer subtract hourly wage payments from the same week in which the commission was earned, where the employer separately, and in addition to commissions: tracks all employee hours worked; pays at least the

minimum hourly wage for all hours worked up to 40 in a workweek; and pays statutory premium pay for all hours worked over 40 and on Sundays?

2. Does *Sleepy's* apply retroactively to sales compensation plans which had been designed in good-faith reliance on the guidance contained in multiple prior state agency opinion letters?

3. Does 454 CMR § 27.03(3), on which *Sleepy's* relies in part, violate the due process guarantees in the Fourteenth Amendment to the United States Constitution and Article 10 of the Massachusetts Declaration of Rights because it: is impermissibly vague; conflicts with the Massachusetts Overtime Statute, M.G.L. c. 151, § 1A; and exceeds the authority granted to the issuing agency by the enabling statute, *id.* c. 23, § 1, if applied to the Sunday premium pay requirement of the Massachusetts Blue Laws?

4. Do employees have a private right of action to enforce the Sunday pay provision of the Massachusetts Blue Laws, M.G.L. c. 136, § 6(50)?⁵

BRIEF ARGUMENT IN SUPPORT OF APPLICANT'S POSITIONS

The Superior Court erred in at least four respects: (1) Jordan's pay plan was materially different from, and in full conformity with, this Court's holding in

⁵ The appeal also presents the following issue of law, which was raised and properly preserved below: whether the trial court erred in using a lodestar multiplier to enhance the award of attorneys' fees to class counsel. However, Jordan's does not rely on this issue as a basis for seeking direct appellate review.

Sleepy's; (2) the Superior Court should not have applied *Sleepy's* retroactively; (3) the Superior Court's summary judgment ruling relied (as did *Sleepy's*) on a regulation which is both unconstitutional and inapplicable to the Sunday premium pay requirement; and (4) there is no private right of action for alleged violations of the Sunday pay provisions of the Blue Laws.

A. Jordan's Pay Plan was Completely Different from the Plan Used by Sleepy's.

Sutton's claims rested entirely on the theory that *Sleepy's* invalidated Jordan's sales compensation plan. Jordan's pay plan, however, is materially different from the pay plan in *Sleepy's*. Jordan's pay plan, therefore, remains entirely lawful and appropriate, notwithstanding *Sleepy's*.

Sleepy's paid its sales employees the same daily lump sum of \$125 regardless of the number of hours worked, including overtime and Sunday hours, and did not pay time-and-a-half for overtime or Sunday hours. *Sleepy's*, 482 Mass. at 229. *Sleepy's* then attempted to retroactively designate commissions that it paid over and above the daily lump sums to meet its premium pay obligations, which had not been separately determined or paid.

Jordan's took a markedly different approach. Jordan's tracked each employee's regular, overtime, and Sunday hours and paid, each week, the applicable hourly amount for each hour worked, including premium pay for overtime and Sunday hours. Those hourly payments were guaranteed, and paid

each week, regardless of whether or in what amount the employee earned any commissions, and those hourly payments were never repaid or returned to Jordan's. Thus, Jordan's sales employees did, in fact, receive "separate and additional" premium pay for overtime and Sunday hours as required by *Sleepy's*.

The Superior Court found that Jordan's commission formula violated *Sleepy's* because it took into account employees' hourly pay, which Jordan's referred to as a "draw"; specifically, Jordan's calculated employees' commissions each week using the following formula:

$$\text{Commission} = (\text{Total Sales}) \times (\text{Commission Rate}) - (\text{Total Hourly Pay})$$

In other words, commissions were earned and payable to the extent they exceeded the hourly pay that the employee received for the week. However, *Sleepy's* does not prohibit, or even address, any particular commission formula at all, let alone the specific formula used by Jordan's. This is consistent with Massachusetts law, which specifies only *when* commissions must be paid, M.G.L. c. 149, § 148, not *how* they may be calculated.

B. *Sleepy's* Should not Apply Retroactively.

In deciding whether to limit a holding to prospective application, courts consider "the extent to which the decision creates a novel and unforeshadowed rule; ... the benefits of retroactive application in furthering the purpose of the new rule; and ... the hardship or inequity likely to follow from retroactive application."

Shirley Wayside L.P. v. Board of App. of Shirley, 461 Mass. 469, 481 (2012) (citation omitted). There scarcely could be a more appropriate candidate for prospective-only application than *Sleepy's*.

1. *Sleepy's* created a novel and unforeshadowed rule.

The decision in *Sleepy's* was, to say the least, unexpected. Aside from this Court's rare departure from its usual deference to agency interpretations of their own regulations, *see Swift v. AutoZone, Inc.*, 441 Mass. 443, 450 (2004), the Court relied on prior cases that did not concern commissioned sales employees. *See Mullally v. Waste Mgt. of Mass., Inc.*, 452 Mass. 526 (2008) (prevailing wage law); *Somers v. Converged Access, Inc.*, 454 Mass. 582 (2009) (independent contractor misclassification); *Dixon v. Malden*, 464 Mass. 446 (2013) (unpaid vacation time). Indeed, as regards the holding in *Sleepy's* that, "employers may not retroactively allocate payments made for one purpose to a different purpose," this Court had previously held just the opposite in a closely analogous context, when it ruled that the Overtime Statute permitted crediting of Sunday premium payments toward an employer's overtime obligations. *See Swift*, 441 Mass. at 445. No one could have predicted that the Court would rely on inapposite cases to so radically alter the landscape of employers' pay practices with respect to commissioned sales employees, particularly where the relevant agencies had sanctioned, via three separate opinion letters, the type of commission plan at issue here.

2. Retroactive application does not further the new rule.

Retroactive application does nothing to further the policy goals articulated in *Sleepy's*. Applying *Sleepy's* retroactively cannot reduce employees' past work hours or change employers' past hiring practices, nor would it further the policy goal of compensating employees for the burden of long workweeks: Jordan's employees already worked few overtime hours, and on the rare occasions they did so, they derived greater compensation for working longer hours by virtue of the guaranteed hourly premium pay they received, as well as the greater opportunity to make sales and, thus, earn commissions.

3. Retroactive application is causing inequity and hardship.

Jordan's, as did other Massachusetts retailers, developed its pay plan in good-faith reliance on the state agency opinion letters. Retroactive application of *Sleepy's* thus penalizes employers for going the extra mile to ensure that they were acting lawfully – and being assured by state agencies that they were. That is especially harsh medicine given the mandatory treble damages and attorneys' fees under the Wage Act. Moreover, the multitude of class action lawsuits against Massachusetts retail employers in the wake of *Sleepy's* has put enormous financial strain on employers already struggling with severe disruptions and challenges caused by the COVID-19 pandemic, supply chain issues, labor shortages, and historically high inflation. The result also has harmed employees. *See* Chesto,

supra, Feb. 19, 2020, at B6 (“Most, if not all, employers have changed their compensation systems to comply with the new law of the land. But it hasn’t always been rosy for the workers. Some dealers closed on Sundays as a result. Other employers cut back on commissions”).

C. The Regulation on Which *Sleepy’s* Relies is Unconstitutional.

Sleepy’s relies, in part, on 454 CMR § 27.03(3). However, that regulation is not just inapplicable, but unconstitutional.

1. The regulation is unconstitutionally vague.

A regulation must “provide fair notice of what it prohibits or requires so that persons of common intelligence may conform their conduct to the law.” *Schoeller v. Board of Regis. of Funeral Directors & Embalmers*, 463 Mass. 605, 611 (2012). Vague regulations violate due process, because they “engender the possibility of arbitrary and discriminating enforcement[.]” *Massachusetts Eye & Ear Infirmary v. Bullen*, 1997 WL 397005, *10 (Mass. Super. July 10, 1997) (quoting *Caswell v. Licensing Comm’r for Brockton*, 387 Mass. 864, 873 (1983)).

The overtime regulation fails this test. It states in relevant part that, “[w]hether a nonexempt employee is paid on an hourly, piece work, salary, or any other basis, such payments shall not serve to compensate the employee for any portion of the overtime rate[.]” 454 CMR § 27.03(3). That language literally makes no sense: payment of overtime pay would not count toward the obligation

to pay overtime pay, leading to an infinitely circular result. It is thus impossible for employers even to understand what the regulation prohibits, let alone conform their conduct to it.

2. The regulation conflicts with the Overtime Statute.

As applied to Jordan's, the overtime regulation also impermissibly conflicts with the Overtime Statute. *See Massachusetts Hosp. Ass'n, Inc. v. Department of Med. Security*, 412 Mass. 340, 342 (1992). Jordan's in fact paid hourly premium pay for all overtime and Sunday hours, in addition to and separate and apart from commissions. Applying the regulation to Jordan's in the same manner as this Court applied it to Sleepy's would require Jordan's to treat the overtime and Sunday payments as having never been made, then make additional and separate overtime and Sunday payments in the same amounts. Jordan's thus would have to pay its sales employees twice for the same overtime and Sunday hours, which exceeds the "one and one-half" times minimum wage required under the Overtime Statute. *See M.G.L. c. 151, § 1A.*

3. As regards Sunday pay, the regulation exceeds the issuing agency's authority under the enabling statute.

The regulation also is beyond the scope of the enabling legislation as regards Sunday pay. The DLS is a department of the Executive Office of Labor and Workforce Development ("EOLWD"), which is authorized to "adopt regulations for the implementation or interpretation of any law enforced or administered by

any department, office, agency, or other entity in the” EOLWD. M.G.L. c. 23, § 1. The Sunday pay provisions of the Blue Laws, however, are under the jurisdiction of the Attorney General, not the EOLWD. *Id.* c. 136, § 6(50). The DLS thus has no authority to regulate Sunday pay requirements, rendering the regulation invalid as applied to Sunday pay. *See Massachusetts Hosp. Ass’n, Inc.*, 412 Mass. at 342.

D. There is no Private Right of Action for Blue Laws Violations.

The Wage Act creates a private right of action specifically for the 12 statutes listed therein. *See* M.G.L. c. 149, § 150, para. 2; *Donis v. American Waste Svcs., LLC*, 485 Mass. 257, 262 (2020). The Blue Laws are not in that list. Thus, applying the plain language of the Wage Act, there is no private right to enforce the Sunday pay provision of the Blue Laws. *Cf. Phillips v. Equity Residential Mgt., L.L.C.*, 478 Mass. 251, 258 (2017) (holding treble damages under security deposit law available only for specifically enumerated statutory violations).

The legislative history also supports this result. While the Blue Laws have been on the books since Colonial times, the Sunday premium pay requirement was not enacted until 1977. *See* St. 1977, c. 722. Despite numerous subsequent amendments to both the Blue Laws and the Wage Act, the Legislature has never implemented a private right of action. *See* St. 1983, c. 8, § 1; *id.* § 2; St. 1988, c. 311, §§ 3, 5; St. 1989, c. 287, §§ 56, 58; St. 1994, c. 193; St. 1996, c. 151, § 293; St. 1998, c. 161, §§ 477-79; St. 1999, c. 127, § 145; St. 2002, c. 32, § 3; St. 2005,

c. 99, § 2; St. 2014, c. 148, § 2; *id.* c. 260, § 11; *id.* c. 505, § 2; St. 2018, c. 121, §§ 5-16; St. 2020, c. 124, §§ 9-11.

Additionally, in *Donis*, the Court explained that, in assessing the interaction between the Wage Act and other statutes, courts must examine whether “the central thrust” of the claim “was [the employer’s] purported violations of the Wage Act,” or its alleged failure to comply with a separate statutory obligation. *Donis*, 485 Mass. at 264 (quoting *Fernandes v. Attleboro Hous. Auth.*, 470 Mass. 117, 125 (2014)). The “central thrust” of Sutton’s claim is that Jordan’s failed to make premium payments as required by the Sunday pay provision of the Blue Laws. Applying *Donis*, Sutton thus has no private right of action for alleged Blue Laws violations and cannot pursue that claim under the Wage Act.⁶

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This appeal warrants direct appellate review for at least three reasons.

First, this appeal presents “questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court[.]” Mass. R. App. P. 11(a)(1). No appellate court (and, to Jordan’s knowledge, no trial court other than the Superior Court here) has ruled on the

⁶ Indeed, the Superior Court correctly held that Sutton could ***not*** pursue a claim for allegedly being required to work on Sundays in violation M.G.L. c. 136, § 6(50), because “no private right of action for such a claim exists.” *Addendum*, at 61. That should have been the Superior Court’s holding as regards the Sunday premium pay requirement, as well, which is in the same section of the Blue Laws.

applicability of *Sleepy's* to the very different set of facts presented by the instant case; *i.e.*, an employer (Jordan's) that, on a weekly basis: (1) tracks all regular, overtime, and Sunday hours of its commissioned sales employees; (2) pays those employees minimum wage for all regular hours worked, plus statutory premium pay for all overtime and Sunday hours; and (3) separately pays commissions based on a formula which, in part, takes account of the employee's hourly pay for that week. In addition, while several Superior Court judges have applied *Sleepy's* retroactively to pay plans that pre-date *Sleepy's*, no appellate court has ruled on whether it is appropriate to do so. Finally, there has been no appellate court decision squarely addressing whether employees have a private right of action for alleged violations of the Sunday pay provisions of the Blue Laws.

Second, this appeal raises "questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth[.]" Mass. R. App. P. 11(a)(2). Jordan's asserts that the regulation at issue both in *Sleepy's* and in the Superior Court's summary judgment ruling violates the due process protections of the United States Constitution and the Massachusetts Declaration of Rights.

Third, this case presents "questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Retail employers across the Commonwealth have been faced with a barrage of class

action lawsuits since *Sleepy's* was decided, and have paid out huge amounts in settlements. Moreover, in many instances – the present case included – the compensation policies at issue were designed in good faith reliance on agency opinion letters which this Court has characterized as “misleading.” Resolving the questions presented by this appeal will provide much needed clarity to both employers and employees in Massachusetts. Moreover, as most wage and hour class actions end by way of settlement, the opportunities for this Court to weigh in on the important issues raised herein are few and far between. Justice and the public interest thus weigh heavily in favor of the Court exercising direct appellate review.

CONCLUSION

For the foregoing reasons, Jordan’s respectfully requests that the Court grant its application for direct appellate review.

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By its attorneys,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Application for Direct Appellate Review complies with the requirements of Mass. R. App. P. 20. It is written in 14-point Times New Roman, a proportional font, and the argument section contains 1,950 words as determined by the word count function in Microsoft Word 365, which was used to prepare this Application.

/s/ **Brian H. Lamkin**

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, I caused a copy of the foregoing to be served by eFileMA, and by electronic mail, on Hillary Schwab, Esq. and Brant Casavant, Esq., counsel for Plaintiff-Appellee.

/s/ **Brian H. Lamkin**

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ADDENDUM

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1981CV01763 Matthew Sutton on behalf of Themselves and all others similarly situated et al vs. Jordan's Furniture, Inc.

- Case Type:
- Contract / Business Cases
- Case Status:
- Closed
- File Date
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- DCM Track:
- F - Fast Track
- Initiating Action:
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- Status Date:
- 11/01/2021
- Case Judge:
-
- Next Event:
-



[All Information](#) [Party](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

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Events

Date	Session	Location	Type	Event Judge	Result
10/24/2019 02:00 PM	Civil L2 CR16	Courtroom 710	Rule 12 Hearing		Held - Under advisement
09/30/2020 10:00 AM	Civil L2 CR16	Courtroom 710	Motion Hearing	Freniere, Hon Diane	Rescheduled
09/30/2020 03:00 PM	Civil L2 CR16	Courtroom 710	Motion Hearing	Freniere, Hon Diane	Held as Scheduled
10/27/2020 03:00 PM	Civil L2 CR16	Courtroom 710	Hearing on Class Action Certification	Barry-Smith, Hon. Christopher K	Rescheduled
10/28/2020 03:30 PM	Civil L2 CR16	Courtroom 710	Hearing on Class Action Certification	Barry-Smith, Hon. Christopher K	Held - Under advisement
05/25/2021 02:00 PM	Civil L2 CR16		Rule 16 Conference	Sarrouf, Camille	Held as Scheduled
05/25/2021 02:45 PM	Civil L2 CR16		Rule 16 Conference		Rescheduled
06/24/2021 02:15 PM	Civil L2 CR16		Rule 16 Conference	Sarrouf, Camille	Rescheduled
06/29/2021 11:00 AM	Civil L2 CR16		Rule 56 Hearing	Sarrouf, Camille	Decision rendered
10/05/2021 02:00 PM	Civil L2 CR16		Final Pre-Trial Conference		Rescheduled
10/05/2021 04:00 PM	Civil L2 CR16		Status Review	Sarrouf, Camille	Held via Video/Teleconference
10/15/2021 09:00 AM	Civil L2 CR16		Status Review	Sarrouf, Camille	Held as Scheduled
11/16/2021 04:00 PM	Civil L2 CR16		Conference to Review Status	Sarrouf, Camille	Canceled
11/30/2021 02:00 PM	Civil L2 CR16		Final Trial Conference		Canceled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/06/2021 09:00 AM	Civil L2 CR16		Jury Trial		Canceled
12/23/2021 10:00 AM	Civil L2 CR16		Motion Hearing to Assess Costs	Sarrouf, Camille	Rescheduled
12/27/2021 02:30 PM	Civil L2 CR16		Motion Hearing to Assess Costs	Sarrouf, Camille	Held - Under advisement

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	06/19/2019	09/17/2019	90	11/02/2021
Answer	06/19/2019	10/17/2019	120	11/02/2021
Rule 12/19/20 Served By	06/19/2019	10/17/2019	120	11/02/2021
Rule 12/19/20 Filed By	06/19/2019	11/18/2019	152	11/02/2021
Rule 12/19/20 Heard By	06/19/2019	12/16/2019	180	11/02/2021
Rule 15 Served By	06/19/2019	10/17/2019	120	11/02/2021
Rule 15 Filed By	06/19/2019	11/18/2019	152	11/02/2021
Rule 15 Heard By	06/19/2019	12/16/2019	180	11/02/2021
Discovery	06/19/2019	07/29/2020	406	11/02/2021
Rule 56 Served By	06/19/2019	08/28/2020	436	11/02/2021
Rule 56 Filed By	06/19/2019	09/29/2020	468	11/02/2021
Final Pre-Trial Conference	06/19/2019	10/13/2020	482	11/02/2021
Judgment	06/19/2019	06/18/2021	730	11/02/2021
Under Advisement	10/24/2019	11/23/2019	30	06/11/2020
Under Advisement	10/28/2020	11/27/2020	30	11/02/2021
Under Advisement	06/29/2021	07/29/2021	30	11/02/2021
Under Advisement	12/27/2021	01/26/2022	30	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/19/2019	Attorney appearance On this date Brant Casavant, Esq. added as Private Counsel for Plaintiff Matthew Sutton		
06/19/2019	Attorney appearance On this date Brant Casavant, Esq. added as Private Counsel for Plaintiff Amie Arestani		
06/19/2019	Case assigned to: DCM Track F - Fast Track was added on 06/19/2019		Image
06/19/2019	Original civil complaint filed.	1	Image
06/19/2019	Civil action cover sheet filed.	2	Image
06/19/2019	Demand for jury trial entered.		
07/03/2019	Service Returned for Defendant Jordan's Furniture, Inc.: Service accepted by counsel;	3	Image
07/23/2019	Received from Defendant Jordan's Furniture, Inc.: Answer with claim for trial by jury;	4	Image
07/23/2019	Attorney appearance On this date Brian Howard Lamkin, Esq. added as Private Counsel for Defendant Jordan's Furniture, Inc.		
07/23/2019	Attorney appearance On this date Ariel D Cudkowicz, Esq. added as Private Counsel for Defendant Jordan's Furniture, Inc.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/23/2019	Defendant's Notice of intent to file motion to Dismiss Applies To: Jordan's Furniture, Inc. (Defendant)	5	Image
09/05/2019	Defendant Jordan's Furniture, Inc.'s Motion to dismiss certain counts for lack of subject matter jurisdiction	6	Image
09/05/2019	Defendant Jordan's Furniture, Inc.'s Motion to dismiss certain counts :Memorandum in support	6.1	Image
09/05/2019	Opposition to Defendant's Partial Motion to Dismiss filed by Amie Arestani on behalf of Themselves and all others similarly Situated	6.2	Image
09/05/2019	Affidavit of Hillary Schwab, Esq.	6.3	Image
09/05/2019	Affidavit of Amie Arestani	6.4	Image
09/05/2019	Reply/Sur-reply Reply in Support of Defendant's Motion to Dismiss Applies To: Amie Arestani on behalf of Themselves and all others similarly Situated (Plaintiff)	6.5	Image
09/10/2019	The following form was generated: Notice to Appear Sent On: 09/10/2019 15:39:16		
09/16/2019	Attorney appearance On this date Hillary Schwab, Esq. added as Private Counsel for Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated		
10/10/2019	Plaintiff, Defendant(s) Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc. Joint motion filed for Entry of Stipulated Protective Order	7	Image
10/15/2019	Endorsement on Motion of parties for entry of Stipulated Confidentiality Protective Order (#7.0): ALLOWED after review as modified. See Order of same date.		Image
10/15/2019	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated, Jordan's Furniture, Inc.'s Submission to the Court "Stipulated Confidentiality Protective Order" (So Ordered, by the Court, Krupp, J.) copies mailed 10/16/2019	8	Image
10/24/2019	Matter taken under advisement: Rule 12 Hearing scheduled on: 10/24/2019 02:00 PM Has been: Held - Under advisement Hon. Peter B Krupp, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
12/20/2019	Jordan's Furniture, Inc.'s Memorandum in support of defendant's motion to dismiss claims of plaintiff Amie Arestani (supplemental memorandum)	9	Image
12/20/2019	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated's Supplemental and Brief in opposition to Defendant's Partial Motion To Dismiss	10	Image
01/10/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated's Response to defendant's supplemental brief on defendant's motion to dismiss	11	Image
01/10/2020	Reply/Sur-reply Defendant's reply to plaintiff's supplemental memorandum in opposition to defendant's motion to dismiss claims of plaintiff Amie Arestani.	12	Image
03/05/2020	Defendant Jordan's Furniture, Inc.'s EMERGENCY Motion to stay plaintiff's motion for class certification	13	Image
03/06/2020	Opposition to defendant's emergency motion to stay filed by Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated	14	Image
03/09/2020	Endorsement on Motion to Stay Plaintiff's Motion for Class Certification (Emergency) filed by Defendant (#13.0): DENIED without prejudice to efile pursuant to Rule 9A. Judge: Freniere, Hon Diane		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/10/2020	Defendant Jordan's Furniture, Inc.'s EMERGENCY Motion to stay plaintiff's motion for class certification Rule 9c Certification	15	Image
03/10/2020	Opposition to Defendant Jordan's Furniture, Inc.'s EMERGENCY Motion to stay filed by	15.1	Image
04/02/2020	Endorsement on Motion to Stay Plaintiff's Motion for Class Certification (#15.0): ALLOWED in part. After review, Defendant's Emergency Motion for Class Certification (Docket #15) is ALLOWED IN PART insofar as proceedings on plaintiff's motion for class certification are stayed until twenty-one (21) days after the Court acts on the motion to dismiss, which is currently under advisement in light of the parties' supplemental submissions in January 2020; but is otherwise DENIED without prejudice. Judge: Krupp, Hon. Peter B		Image
06/04/2020	Endorsement on Motion to dismiss certain Counts for Lack of Subject Matter Jurisdiction (#6.0): ALLOWED After hearing, Allowed. See Memorandum and Order of same date. Dated: June 4, 2020 and notices mailed Judge: Krupp, Hon. Peter B		Image
06/04/2020	MEMORANDUM & ORDER: MEMORANDUM AND ORDER ON DEFENDANT'S MOTION TO DISMISS AMIE ARESTANI'S CLAIMS (which see 9 pages) ORDER: Defendant's Motion to Dismiss Claims of Amie Arestani for Lack of Subject Matter Jurisdiction (Docket #6) is ALLOWED. Dated: June 4, 2020 and copies mailed Judge: Krupp, Hon. Peter B	16	Image
07/07/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Assented to Motion for Leave to File Reply in Excess of Five Pages	17	Image
07/13/2020	Endorsement on Motion for Leave to File Reply in Excess of Five Pages (#17.0): Other action taken Plaintiff may file his Reply but the court reserves on whether plaintiff should have anticipated the arguments raised by defendant such that the additional pages requested should be allowed. Dated: 7/10/2020		Image
07/29/2020	Defendant Jordan's Furniture, Inc.'s Assented to Motion for leave to file a Sur-Reply	18	Image
07/30/2020	Endorsement on Motion to (#18.0): ALLOWED To File Sur-reply.....Allowed. Judge: Wall, Hon. Joshua		Image
08/03/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Joint Motion to extend tracking deadline(s)	19	Image
08/11/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated's Motion for leave to file 3-page sur-sur-reply unopposed	20	Image
08/11/2020	Endorsement on Motion to extend tracking deadline(s) (#19.0): ALLOWED The clerk shall set a new tracking order consistent with the times requested herein.		Image
08/12/2020	Plaintiffs, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated, Jordan's Furniture, Inc.'s Joint Motion for IMPOUNDMENT OF EXHIBITS AND BRIEFING	21	Image
08/27/2020	Endorsement on Motion for Impoundment of Exhibits and Briefing (Joint) (#21.0): Other action taken The Court Orders the parties to file the proposed materials, indicating the proposed redaction(s), for impoundment for the Court's in camera review prior to ruling on this motion. See Rule 2(b)(2). A hearing is required pursuant to Rule 7. Judge: Freniere, Hon Diane		Image
08/27/2020	The following form was generated: Notice to Appear Sent On: 08/27/2020 12:03:07 Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Julie Brennan, Esq. Manchel & Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062 Notice Sent To: Brian Howard Lamkin, Esq. Manchel & Brennan, P.C. 100 River Ridge Drive Suite 308,		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Norwood, MA 02062 Notice Sent To: Ariel D Cudkowicz, Esq. Seyfarth Shaw LLP World Trade Center East Two Seaport Lane Suite 300, Boston, MA 02210-2028		
09/03/2020	Endorsement on Motion for Leave to File 3-Page Sur-sur-Reply filed unopposed by Plaintiff (#20.0): ALLOWED Based on representations made by plaintiffs counsel regarding new law post dating the filing of the original motion, this motion is provisionally ALLOWED.		Image
09/24/2020	Event Result:: Motion Hearing scheduled on: 09/30/2020 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Comment: Contacted counsel via phone to notify of rescheduling to later in day Hon Diane Freniere, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
09/30/2020	Event Result:: Motion Hearing scheduled on: 09/30/2020 03:00 PM Has been: Held as Scheduled Hon Diane Freniere, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
09/30/2020	ORDER: Order Pursuant to Uniform Rules on Impoundment Procedure, Rule 8 This matter is before the Court on the parties' joint motion for impoundment, pursuant to Rule 2 (Docket No. 21) of the Uniform Rules on impoundment procedure. The underlying case is of the following nature: Wage Act violations. The motion requests the court to issue an order to impound the following information: confidential deposition testimony, exhibits & related briefing relevant to class-certification motion & opposition. This motion was not opposed and a hearing was conducted. The Court finds that good cause for impoundment of the above-listed materials has been demonstrated by the movant to protect the following interests: confidential business interests of the defendant: consistent with this Court's prior issuance of a protective order in this case to protect these interests. See Docket No. 7 Ruling dated 10/15/19, Mass. R. Civ. P. 26(c)(7) & URIP Rule 7 (e). This ORDER shall expire on: Never/N/A See scanned Order for full text	22	Image
10/05/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Motion for Class Certification and Memorandum in Support Thereof	23	Image
10/05/2020	Exhibits/Appendix Exhibits 1-9 to Plaintiff's Motion Filed under Seal	23.1	
10/05/2020	Opposition to Motion for Class Certification filed by Jordan's Furniture, Inc.	23.3	Image
10/05/2020	Reply/Sur-reply Plaintiff's Reply in Further Support of Class Certification	23.4	Image
10/05/2020	Reply/Sur-reply Defendant's Sur Reply	23.5	Image
10/05/2020	Reply/Sur-reply Plaintiff's Sur Sur Reply	23.6	Image
10/05/2020	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Supplement to Motion for Class Certification	23.2	Image
10/26/2020	Event Result:: Hearing on Class Action Certification scheduled on: 10/27/2020 03:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
10/28/2020	Matter taken under advisement: Hearing on Class Action Certification scheduled on: 10/28/2020 03:30 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/22/2020	<p>MEMORANDUM & ORDER:</p> <p>On Plaintiff's Motion for Class Certification</p> <p>CONCLUSION AND ORDER:</p> <p>Having determined that plaintiffs satisfy the requirements of Rule 23, the motion for class certification is ALLOWED. The following class is certified for purposes of this action:</p> <p>All individuals whom Jordan's Furniture, Inc. has employed in the positions of "sales consultant" or "sleep technician," at one or more of its retail stores located in Massachusetts, during the time period between June 19, 2016 and August 1, 2019 and who worked more than forty hours in any workweek or on any Sunday.</p> <p>SO ORDERED</p> <p>(See scanned Memorandum and Order for full text)</p> <p>Date: December 21, 2020</p> <p>Judge: Barry-Smith, Hon. Christopher K</p>	24	Image
02/16/2021	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Joint Motion to Extend Tracking Order Deadlines	25	Image
05/04/2021	<p>Endorsement on Motion to extend tracking deadline(s) (#25.0): Other action taken</p> <p>The court to set a date for a Rule 16 conference. Dated 4/29/21</p> <p>Judge: Sarrouf, Camille</p>		
05/04/2021	<p>The following form was generated:</p> <p>Notice to Appear</p> <p>Sent On: 05/04/2021 10:24:13</p> <p>Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111</p> <p>Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111</p> <p>Notice Sent To: Julie Brennan, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062</p> <p>Notice Sent To: Brian Howard Lamkin, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062</p> <p>Notice Sent To: Ariel D Cudkowicz, Esq. Seyfarth Shaw LLP World Trade Center East Two Seaport Lane Suite 300, Boston, MA 02210-2028</p>		
05/17/2021	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Joint Motion for Impoundment of Confidential Materials and to Extend deadline to file Rule 56 Motions	26	Image
05/20/2021	<p>Event Result:: Rule 16 Conference scheduled on:</p> <p>05/25/2021 02:45 PM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date</p> <p>Camille Sarrouf, Presiding</p> <p>Staff:</p> <p>Matthew Day, Assistant Clerk Magistrate</p>		
05/20/2021	<p>The following form was generated:</p> <p>Notice to Appear</p> <p>Sent On: 05/20/2021 11:13:07</p> <p>Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111</p> <p>Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111</p> <p>Notice Sent To: Julie Brennan, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062</p> <p>Notice Sent To: Brian Howard Lamkin, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062</p> <p>Notice Sent To: Ariel D Cudkowicz, Esq. Seyfarth Shaw LLP World Trade Center East Two Seaport Lane Suite 300, Boston, MA 02210-2028</p>		
05/25/2021	<p>Event Result:: Rule 16 Conference scheduled on:</p> <p>06/24/2021 02:15 PM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date</p> <p>Camille Sarrouf, Presiding</p> <p>Staff:</p> <p>Matthew Day, Assistant Clerk Magistrate</p>		
05/25/2021	<p>Event Result:: Rule 16 Conference scheduled on:</p> <p>05/25/2021 02:00 PM</p> <p>Has been: Held as Scheduled</p> <p>Camille Sarrouf, Presiding</p> <p>Appeared:</p>		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Plaintiff Brant Casavant, Esq., Private Counsel Defendant Julie Brennan, Esq., Private Counsel Staff: Matthew Day, Assistant Clerk Magistrate		
05/25/2021	Scheduled: Event: Jury Trial Date: 12/06/2021 Time: 09:00 AM Result: Canceled		
05/25/2021	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 05/25/2021 14:25:49 Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Julie Brennan, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062		
05/25/2021	Endorsement on Motion for Impoundment Of Confidential Materials And To Extend Deadline To File Rule 56 Motions (#26.0): ALLOWED Order signed + dated to impound. Dates set a hearing for final pre-trial conf., final trial conference and trial. So ordered.		Image
05/25/2021	ORDER: Re: Joint Motion For Impoundment	27	Image
06/04/2021	Docket Note: Provisional Impoundment		
06/04/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Submission of List of Documents and Notice of Filing PROVISIONALLY IMPOUNDED		
06/04/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated's Motion for Partial Summary Judgment and Memorandum Support Thereof PROVISIONALLY IMPOUNDED	28	
06/04/2021	Opposition to to Plaintiff's Motion for Partial Summary Judgment filed by Jordan's Furniture, Inc.PROVISIONALLY IMPOUNDED	28.1	
06/04/2021	Reply/Sur-reply Plaintiff's Reply in Further Support of Motion for Partial Summary Judgment PROVISIONALLY IMPOUNDED PROVISIONALLY IMPOUNDED	28.2	
06/04/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Statement of Material Facts PROVISIONALLY IMPOUNDED	28.3	
06/04/2021	Affidavit Affidavit of Brant Casavant, Esq. PROVISIONALLY IMPOUNDED	28.4	
06/04/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Rule 9A Index of Exhibits Tab A, Exhibits 1 through Exhibit 12 PROVISIONALLY IMPOUNDED	28.5	
06/04/2021	Defendant Jordan's Furniture, Inc.'s Motion for summary judgment, MRCP 56	29	Image
06/04/2021	Jordan's Furniture, Inc.'s Memorandum in support of Motion for Summary Judgment	29.1	Image
06/04/2021	Affidavit of Jill Franklin	29.2	Image
06/04/2021	Affidavit Julie Brenan	29.3	Image
06/04/2021	Opposition to Defendant's Motion for Summary Judgment filed by	29.4	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/04/2021	Reply/Sur-reply In Support of defendant's Motion for Summary Judgment	29.5	Image
06/04/2021	Defendant Jordan's Furniture, Inc.'s Submission of Consolidated Statement of Facts In Support of Defendant's Motion for Summary Judgment	29.6	Image
06/04/2021	Exhibits/Appendix Defendant's Motion for Summary Judgment Description		Image
06/04/2021	Defendant Jordan's Furniture, Inc.'s Motion for Summary Judgment		Image
06/14/2021	The following form was generated: Notice to Appear Sent On: 06/14/2021 14:41:24 Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Brant Casavant, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Julie Brennan, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062 Notice Sent To: Brian Howard Lamkin, Esq. Manchel and Brennan, P.C. 100 River Ridge Drive Suite 308, Norwood, MA 02062 Notice Sent To: Ariel D Cudkowicz, Esq. Seyfarth Shaw LLP World Trade Center East Two Seaport Lane Suite 300, Boston, MA 02210-2028		
06/25/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Motion for Partial Summary Judgment and Memorandum In Support Thereof (Redacted)	30	Image
06/25/2021	Opposition to Plaintiff's Motion For Partial Summary Judgment (Redacted) filed by Jordan's Furniture, Inc.	30.1	Image
06/25/2021	Reply/Sur-reply In Further Support of Motion For Partial summary Judgment (Redacted)	30.2	Image
06/25/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Statement of Material Facts (Redacted)	30.3	Image
06/25/2021	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Rule 9A Index of Exhibits Tab A, Exhibits 1 through Exhibit 12 (Redacted)	30.4	Image
06/29/2021	Matter taken under advisement: Rule 56 Hearing scheduled on: 06/29/2021 11:00 AM Has been: Held - Under advisement Camille Sarrouf, Presiding Appeared: Plaintiff Brant Casavant, Esq., Private Counsel Hillary Schwab, Esq., Private Counsel Defendant Julie Brennan, Esq., Private Counsel Brian Howard Lamkin, Esq., Private Counsel Ariel D Cudkowicz, Esq., Private Counsel Staff: Matthew Day, Assistant Clerk Magistrate		
09/23/2021	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT: (See scanned image - 17 pages) ORDER: For the foregoing reasons, it is hereby ORDERED that Jordan's motion for summary judgment is ALLOWED on Count 3 (requiring work on Sundays), but it is otherwise DENIED. It is further ORDERED that Sutton's partial motion for summary judgment on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay) is ALLOWED as to liability. The court will schedule a status conference to address further proceedings in conjunction with this Decision and Order. Dated 9/22/21. Copies mailed 9/23/21. Judge: Sarrouf, Camille	31	Image
09/29/2021	Event Result:: Final Pre-Trial Conference scheduled on: 10/05/2021 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Camille Sarrouf, Presiding		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Staff: Matthew Day, Assistant Clerk Magistrate		
10/01/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated, Amie Arestani on behalf of Themselves and all others similarly Situated's EMERGENCY Motion to prohibit defendant's ex parte communications with class members concerning this litigation	32	Image
10/04/2021	Defendant Jordan's Furniture, Inc.'s Notice of Intent to File Opposition to Plaintiff's "Emergency Motion to Prohibit Defendant's Ex Parte Communications with Class Members Concerning this Litigation"	33	Image
10/05/2021	Opposition to plaintiff's emergency motion to prohibit defendant's ex parte communications with class members concerning this litigation filed by Jordan's Furniture, Inc.	34	Image
10/05/2021	Affidavit of Julie Brennan	34.1	Image
10/05/2021	Event Result:: Status Review scheduled on: 10/05/2021 04:00 PM Has been: Held via Video/Teleconference Camille Sarrouf, Presiding Staff: Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
10/11/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Assented to Notice of withdrawal of plaintiff's emergency motion to prohibit defendant's ex parte communications with class members concerning this litigation (P#32).	35	Image
10/15/2021	Event Result:: Status Review scheduled on: 10/15/2021 09:00 AM Has been: Held as Scheduled Camille Sarrouf, Presiding Appeared: Plaintiff Brant Casavant, Esq., Private Counsel Hillary Schwab, Esq., Private Counsel Defendant Julie Brennan, Esq., Private Counsel Staff: Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
10/26/2021	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Joint Motion to enter proposed form of judgment (Proposed form of) judgment exhibit 1)	36	Image
11/01/2021	Final Judgment. It is ORDERED and ADJUDGED:: Pursuant to Mass. R. Civ. P. 58(a), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment, final judgment is hereby entered as follows: 1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of: (a) \$2,696,992.16, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1; (b) \$5,393,984.32, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B, and payable to each class member in the amounts as set forth in Exhibit 1; and (c) prejudgment interested in the total amount of \$767,866.92, payable to each class member in the amounts as set forth in Exhibit 1. 2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.	37	Image
11/01/2021	Event Result:: Conference to Review Status scheduled on: 11/16/2021 04:00 PM Has been: Canceled For the following reason: Case Settled Camille Sarrouf, Presiding Staff: Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
11/01/2021	Event Result:: Final Trial Conference scheduled on: 11/30/2021 02:00 PM Has been: Canceled For the following reason: Case Settled Camille Sarrouf, Presiding Staff:		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
11/01/2021	Event Result:: Jury Trial scheduled on: 12/06/2021 09:00 AM Has been: Canceled For the following reason: Case Settled Camille Sarrouf, Presiding Staff: Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
11/11/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Notice of Service. Served a Motion to Amend Judgement and Petition for Attorneys' Fees and Costs on counsel for the Defendant Jordan's Furniture, Inc.	38	Image
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12/06/2021	Plaintiff Matthew Sutton on behalf of Themselves and all others similarly situated's Motion to amend the judgment and petition for fees and costs	40	Image
12/06/2021	Matthew Sutton on behalf of Themselves and all others similarly situated's Memorandum in support of motion to amend the judgment and petition for fees and costs	40.1	Image
12/06/2021	Opposition to Plaintiff's motion to amend the judgment and petition for fees and costs (P#40) filed by	40.2	Image
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12/20/2021	Event Result:: Motion Hearing to Assess Costs scheduled on: 12/23/2021 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Camille Sarrouf, Presiding Staff: Matthew Day, Assistant Clerk Magistrate Douglas Nagengast, Assistant Clerk Magistrate		
12/27/2021	Reply/Sur-reply by defendant Jordan's Furniture, Inc. Judge: Sarrouf, Camille	42	
12/27/2021	Matter taken under advisement: Motion Hearing to Assess Costs scheduled on: 12/27/2021 02:30 PM Has been: Held - Under advisement Camille Sarrouf, Presiding Appeared: Plaintiff Brant Casavant, Esq., Private Counsel Hillary Schwab, Esq., Private Counsel Defendant Ariel D Cudkowicz, Esq., Private Counsel Staff: Daniel Flaherty, Assistant Clerk Magistrate & FTR		
05/10/2022	Endorsement on Motion to amend judgment and petition for fees (#0.0): Other action taken EXPANDED ENDORSEMENT on plaintiff's motion to amend judgment and petition for fees and costs. The crux of the dispute was whether defendant's compensation plan for sales consultants satisfied Sullivan v. Sleepy's LLC, 482 Mass. 227, 236 n.16, 237 (2019) ("Sleepy's"), in which the Supreme Judicial Court held that employers must pay employees "separate and additional" . . . payments beyond their draws and commissions' for working overtime and Sundays. The Class Action Complaint ("Complaint") contended that defendant's compensation plan did not meet the requirements, and thus defendant violated the Overtime Statute (Count 1) and the Wage Act and the Sunday pay law (Count 2). The Complaint also alleged that defendant violated the Wage Act by requiring employees to work on Sundays without paying its employees premium pay (Count 3). Defendant moved for summary judgment on all counts and plaintiff cross-moved for partial summary judgment on Counts 1 and 2 with respect to liability only. Following this Court's decision, dated September 22, 2021, where this Court Allowed defendant's motion	44	

on Count 3 (requiring work on Sundays) only and Allowed plaintiff's partial motion for summary judgment on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay), plaintiff filed the present motion and a hearing on the motion was held on December 21, 2021. Plaintiff seeks their full measure of fees and costs as well as a loadstar multiplier related to the \$8,8MM judgment obtained. Defendant challenges and seeks a reduction of the hourly rate, total hours worked, costs, and opposes any multiplier whatsoever in response.

A detailed review of the docket, pleadings submitted, affidavits of counsel, billing statements, and relevant case law provides guidance for determination of fees to be awarded and whether such fees would be subject to a loadstar multiplier analysis. Therefore, plaintiffs' motion to amend judgment and petition for fees and costs is ALLOWED in part and DENIED in part. An analysis of each aspect of the requested relief sought by plaintiffs follows.

Attorney Hourly Rate, Time Billing Statements, and Costs:

The standard, as forwarded by defendant, identifies "the average rate in the community for similar work by attorneys with the same years" experience." *Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 790 (2007) (citation omitted). I find the hourly rates submitted by plaintiffs, that being \$650.00 per hour for Attorney Schwab, \$500.00 for Attorney Casavant, and \$125.00 for paralegal work at the firm to be within the range of acceptable fees for like work by attorneys with similar experience and therefore, adopt the rates identified as part of the analysis of the billing statements submitted.

A careful review of the hourly billing statements identified areas of dispute as to, among other things, fees requested for the Arestani claim, expert analytical fees, and mediation/ settlement undertakings, which the Court agrees, in part, with defendants. Therefore, the hours generated by; Attorney Schwab (84.9) are reduced to 52.6 for calculation purposes; Attorney Casavant (297.3) are reduced to 250.4 for calculation purposes; and for paralegal services (25.5) are reduced to 19.6 for calculation purposes. Likewise, costs claimed in the amount of \$17,181.98 are reduced to \$7,631.98.

Loadstar Analysis:

Considering the identified work as that "which is the fair market time reasonably spent preparing and litigating a case." *Fontaine v. Ebtec. Corp.*, 415 Mass. 309, 326 (1993), the analysis turns to the total fees sought via loadstar. Here, I find an enhancement appropriate, the question then is, to what extent, should the Court award. Based upon the factors identified (see Fn. 6), I follow the precedent identified in cases cited by plaintiffs where multipliers ranging up to "four are frequently awarded in common fund cases where the loadstar method is applied," *In re Prudential Ins. Co. of American Sales Prac. Litig.*, 148 F.3d 283, 341 (3d Cir. 1998) see also *In re Linerboard Antitrust Litig.*, 2004 WL 121350, at *16 (E.D. Pa. June 2, 2004) identifying a average multiplier of 4.35.

Plaintiff seeks a multiplier of 5. Regardless of the complexity and nuances related to defendant's compensation methods the plaintiffs' judgment was agreed to after dispositive motions were decided unlike those identified by plaintiffs in their brief. I therefore award a 4.5 times multiplier to the fees generated and identified above as fair and reasonable compensation.

Conclusion:

In consideration of the analysis provided herein the motion to amend judgment is ALLOWED so as to include fees in the following manner:

* Attorney Hillary Schwab.	52.6	hours	@ \$650.00	= \$34,190.00
* Attorney Brant Casavant.	250.4	hours	@ \$500.00	= \$125,200.00
* Paralegal.	19.6	hours	@ \$125.00	= \$2,450.00
* Costs.				= \$7,631.98

The loadstar multiplier of four to the total fees awarded, in the amount of \$161,840, equates to \$647,360.00 plus costs in the amount of \$7,631.98 for an award of \$654,991.98.

SO ORDERED:

Dated: May 10, 2022

05/13/2022 Amended Judgment.

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[Image](#)

It is ORDERED and ADJUDGED::

Pursuant to Mass. R. Civ. P. 58(a) and 59(e), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment, and the Court's May 10, 2022, ruling on Plaintiff's Motion to Amend Judgment and Petition for Fees and Costs, the judgment entered in this action on November 1, 2021, is hereby amended and final judgment is entered as follows:

1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of:

(a) \$2,696,992.16, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1;

(b) \$5,393,984.32, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B and payable to each class member in the amounts as set forth in Exhibit 1;

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	<p>(c) prejudgment interested in the total amount of \$767,866.92, payable to each class member in the amounts as set forth in Exhibit 1;</p> <p>(d) attorneys' fees in the total amount of \$647,360.00; and</p> <p>(e) costs in the total amount of \$7,631.98.</p> <p>2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.</p> <p>Judge: Sarrouf, Camille</p>		
06/03/2022	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Joint Motion to Further Amend Judgement	45	Image
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06/08/2022	Endorsement on Motion to Further Amend Judgment (#45.0): ALLOWED		Image
06/08/2022	<p>Amended Judgment.</p> <p>It is ORDERED and ADJUDGED::</p> <p>Pursuant to Mass. R. Civ. P. 58(a) and 59(e), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment, and the Court's May 10, 2022, ruling on Plaintiff's Motion to Amend Judgment and Petition for Fees and Costs, final judgment is entered as follows:</p> <p>1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of:</p> <p>(a) \$2,755,481.94, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1;</p> <p>(b) \$5,510,963.88, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B and payable to each class member in the amounts as set forth in Exhibit 1;</p> <p>(c) prejudgment interested in the total amount of \$784,519.68, payable to each class member in the amounts as set forth in Exhibit 1;</p> <p>(d) attorneys' fees in the total amount of \$647,360.00; and</p> <p>(e) costs in the total amount of \$7,631.98.</p> <p>2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.</p> <p>Judge: Sarrouf, Camille</p>	48	Image
06/09/2022	Defendant Jordan's Furniture, Inc.'s Certificate of Transcript Order	47	Image
06/09/2022	<p>Defendant's Amended Notice of Appeal: hereby give notice that it appeals from the following: (1) the June 8, 2022 Second Amended Judgment; (2) the May 13, 2022 Amended Judgment; (3) the May 10, 2022 Order on Plaintiff's Motion to Amend Judgment and Petition for Fees and Costs; (4) the November 1, 2021 Judgment; (5) the September 22, 2021 Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment; and (6) the December 21, 2020 Memorandum and Order on Plaintiff's Motion for Class Certification.</p> <p>Applies To: Cudkowicz, Esq., Ariel D (Attorney) on behalf of Jordan's Furniture, Inc. (Defendant); Brennan, Esq., Julie (Attorney) on behalf of Jordan's Furniture, Inc. (Defendant)</p>	49	Image
06/21/2022	<p>NOTICE OF CROSS-APPEAL: Plaintiff hereby gives notice that he cross-appeals the First Amended Judgment entered by the Massachusetts Superior Court for Middlesex County on May 13, 2022 and the Second Amended judgment entered by the Massachusetts court for Middlesex County on June 8, 2022, with respect to that Court's May 10, 2022, order granting in part and denying in part Plaintiff's Motion to Amend Judgment and Petition for Attorneys' Fees and Costs.</p> <p>Applies To: Casavant, Esq., Brant (Attorney) on behalf of Amie Arestani on behalf of Themselves and all others similarly Situated (Plaintiff)</p>	50	Image
11/07/2022	Notice of assembly of record sent to Counsel	51	Image
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11/07/2022	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Notice of Receipt of Transcripts and Readiness to Proceed with Appeal	54	Image
11/09/2022	Plaintiff, Defendant Matthew Sutton on behalf of Themselves and all others similarly situated, Jordan's Furniture, Inc.'s Joint Motion to Correct Appellate Court Entry Statement	55	Image
11/18/2022	<p>Endorsement on Motion to correct Appellate Court entry statement (#55.0): ALLOWED by agreement.</p> <p>Judge: Barry-Smith, Hon. Christopher K</p>		Image

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11/22/2022	Appeal entered in Appeals Court on 11/21/2022 docket number A.C. No: 2022-P-1122	56	Image
Case Disposition			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Summary Judgment	11/01/2021		

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 1981cv01763

MATTHEW SUTTON

vs.

JORDAN'S FURNITURE, INC.

**MEMORANDUM AND ORDER ON PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

The plaintiff, Matthew Sutton, a former salesperson at Jordan's Furniture, Inc., alleges that Jordan's failed to pay "separate and additional compensation" to its commissions-based sales employees when they worked overtime or on Sundays. Sutton seeks class certification for all sales employees whose compensation was 100% commission-based and who worked overtime or Sundays. Jordan's paid these sales employees a "sales draw" each week, which paid an hourly rate for every hour worked. This sales draw then was deducted from commissions the sales employees earned. Although this system facially accounted for all hours worked, Sutton alleges that Jordan's violated the Wage Act and minimum wage law because employees did not receive "separate or additional compensation" for their overtime and Sunday hours; instead the hourly compensation was drawn from commissions. This approach to compensation, Sutton contends, runs afoul of the Supreme Judicial Court's decision in *Sullivan v. Sleepy's, LLC*, 482 Mass. 227 (2019) (holding that commissioned employees must receive "separate and additional" overtime pay regardless whether employee receives a recoverable draw equal to 1.5 times hours worked).

Presently before the court is the plaintiff's motion for class certification, in which they seek to certify a class of all persons who served as commissioned salespersons for Jordan's

between June 19, 2016 and August 1, 2019. After hearing and careful consideration of the parties' positions, the motion for class certification is **ALLOWED**, for the reasons summarized below.

ANALYSIS

In order to be certified as a class action, the plaintiffs must show that: (1) the class is so numerous the joinder of all members is impracticable, (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately represent the interests of the class. Mass. R. Civ. P. 23(a).¹ If those criteria are satisfied, then I must also determine that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Mass. R. Civ. P. 23(b). See *Weld v. Glaxo-Wellcome, Inc.*, 434 Mass. 81, 86 (2001).

As a threshold matter, Jordan's contends that the Supreme Judicial Court's recent decision in *Donis v. American Waste Services, LLC*, 485 Mass. 257 (2020) forecloses Sutton's claims based on Sunday or holiday pay, whether advanced as a class or individually. In *Donis*, the SJC held that the Prevailing Wage Act was not among the statutes that can be enforced through the Wage Act, G.L. c. 149, §§ 148, 150. Because the Commonwealth's Blue Laws mandating premium pay for Sunday and holiday work, like the Prevailing Wage Act, are not on the list of statutes that may be enforced through the Wage Act, see G.L. c. 149, § 150, 2d para., Jordan's contends that Counts II and III must be dismissed. I disagree. The SJC's determination

¹ These requirements serve as "guideposts" for determining whether class certification will protect the interests of class members and be a cost-effective means of resolving multiple claims. See *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

in *Donis* whether the Wage Act's private right of action could be employed to enforce the Prevailing Wage Act did not turn exclusively on whether that statute was listed in Section 150. Central to the court's decision was that the Prevailing Wage Act provided a comprehensive regulatory scheme, including "its own distinct private right of action." *Donis*, 485 Mass. at 263. In contrast, the Sunday and Holiday laws that undergird Counts II and III do not provide a private right of action as does the Prevailing Wage Act. *Donis* therefore does not mandate dismissal. Moreover, I agree with plaintiff that, whatever impact the *Donis* decision ultimately may have is an issue that can be litigated on a class-wide basis.²

Although Jordan's challenges whether Sutton satisfies *any* of the requirements for class certification, the arguments that most warrant scrutiny concern: i) typicality—whether Sutton's claims are typical of the class; and ii) commonality—whether common questions of law or fact predominate over questions affecting only individual members.

With respect to typicality, Jordan's argues that Sutton worked precious little overtime and Sunday hours, especially compared to sales employees who logged many more hours than Sutton. Therefore, even if Sutton has a claim (which Jordan's disputes), his claims are not typical of sales employees due to his sparse record of overtime and Sunday hours. Closely related to this argument, Jordan's contends Sutton is a poor representative of the class, again because of his limited overtime and Sunday hours. It appears that Sutton's stake in the lawsuit, if measured by potential recovery, is likely to be far less than other sales employees because his overtime and Sunday hours appear to be far less than most other sales employees. The typicality standard, however, does not require that Sutton be among those who will benefit *most* from a recovery. Instead, typicality turns on whether Sutton was impacted by the challenged policies,

² Accordingly, this decision does not conclusively determine whether and how *Donis* may impact Sutton's claim; it determines only that *Donis* does not mandate dismissal and does not preclude class certification.

not on the severity of the alleged harm. See *Weld*, 434 Mass. at 87 (typicality established where there is “a sufficient relationship . . . between the injury to the named plaintiff and the conduct affecting the class” and that claims of plaintiff and class “are based on the same legal theory.”). A named plaintiff’s claims can be typical even if they are not strong, relative to other class members. In light of Jordan’s compensation plan and the plaintiff’s legal theory on why that plan violates the rule set forth in the *Sleepy’s* decision, Sutton’s claims satisfy the typicality requirement.

With respect to commonality and predominance, Jordan’s argues that, even though it employed a single compensation plan challenged here, application of the plaintiff’s claim to Jordan’s employees will be individualized and fact-intensive. Some sales employees worked overtime and some did not; some, but not all, worked Sundays. And, whether plaintiff’s theory would result in damages for any employee must be determined on a week-to-week basis. However, application of plaintiff’s claims to hundreds of employees and their schedules, is the type of damages calculation that often arises in employment class actions. Where liability will turn on common questions of law or fact, the need for individual calculation of damages will not prevent class certification. See *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 402 (2004) (“difficult issues with respect to determining the appropriate amount of [damages] . . . do not preclude class certification”); *Weld*, 434 Mass. at 92. Here, most of the case will turn on common questions of fact—including Jordan’s compensation plan—and common questions of law, including whether sales employees are entitled to “separate and additional compensation” for overtime and Sunday hours, which is not satisfied by deducting a draw from commissions. These common questions of law and fact predominate over the potential calculation of damages, which may be fact-intensive but is not necessarily complex.

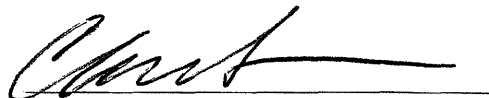
In sum, exercising my discretion and after carefully considering the parties' positions, I find that: (1) the class is sufficiently numerous that joinder of all members is impracticable,³ (2) nearly all factual and legal questions in the case are likely to be common to the class rather than unique to certain members, such that there are questions of law or fact common to the class;; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately represent the interests of the class. Further, the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, because the "individualized" aspects of the case appear to concern only the different calculation of damages. Finally, I have determined that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CONCLUSION AND ORDER

Having determined that plaintiffs satisfy the requirements of Rule 23, the motion for class certification is **ALLOWED**. The following class is certified for purposes of this action:

All individuals whom Jordan's Furniture, Inc. has employed in the positions of "sales consultant" or "sleep technician," at one or more of its retail stores located in Massachusetts, during the time period between June 19, 2016 and August 1, 2019 and who worked more than forty hours in any workweek or on any Sunday.

So ordered.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: December 21, 2020

³ I will adjust the class definition proposed by plaintiff, consistent with plaintiff's suggestion at p. 3 n.3 of Plaintiff's Reply brief, to include only those sales employees who worked more than 40 hours per week or on any Sunday.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 1981CV01763MATTHEW SUTTON¹ & another²vs.

JORDAN'S FURNITURE, INC.

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

The plaintiff, Matthew Sutton ("Sutton"), a former sales consultant for defendant Jordan's Furniture, Inc. ("Jordan's"), filed this class action³ lawsuit alleging that Jordan's failed to pay Sutton and other sales consultants overtime and Sunday premium pay separate and apart from their commissions, in violation of the Massachusetts Overtime Statute, G. L. c. 151A, § 1A, and the Wage Act, G. L. c. 149, §§ 148, 150.⁴ The matter is presently before the court on Jordan's motion for summary judgment on all counts and Sutton's partial motion for summary judgment on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay) as to liability. After hearing and careful review, for the following reasons, Jordan's motion is **ALLOWED** in part and **DENIED** in part, and Sutton's motion is **ALLOWED**.

BACKGROUND

The following is a brief recitation of the undisputed material facts, with certain additional facts reserved for later discussion.

¹ Individually and on behalf of all others similarly situated.

² Amie Arestani, individually and on behalf of all others similarly situated.

³ By order dated December 21, 2020, the court (Barry-Smith, J.) granted Sutton's motion for class certification.

⁴ The court (Krupp, J.) previously dismissed co-plaintiff Amie Arestani's claims for lack of subject matter jurisdiction.

Jordan's is a Massachusetts corporation that owns and operates a chain of furniture retail stores in Massachusetts and other states. It employs sales consultants to sell furniture, bedding, and other related products. Jordan's employed Sutton as a sales consultant at its Natick store from February 2016 until his resignation on January 2, 2019.

At all relevant times, Jordan's compensation policies with respect to its sales consultants were set forth in its "Sales Draw Plan" and "Sales Commission Plan" memoranda, which were available to all sales consultants.⁵ According to those plans, sales consultants were paid on a commission basis with a recoverable draw, which Jordan's calculated on an hourly basis.⁶ An employee's recoverable draw included the employee's hourly base pay for regular hours worked, overtime hours, and premium pay for working on a Sunday. Jordan's then deducted, or recovered, the employee's draw from his or her commissions and paid the employee their draw plus any commissions they had earned in excess of their draw. If the employee did not generate enough commissions to cover the draw, Jordan's carried the negative draw balance forward and deducted that sum from the sales consultant's future commissions. If the sales consultant's commissions exceeded the draw, the difference was used to pay back a negative draw balance, if any, that was carried forward from previous weeks. Commissions were "earned" once an item had been paid for and received by the customer and were calculated at the end of the week. Commissions earned during a given pay period were paid at the end of the following week.

Jordan's calculated a sales consultant's draw payments on an hourly basis using two hourly draw rates. The first hourly draw rate was for "regular" hours worked and was equal to the Massachusetts minimum wage in effect at the time. The second hourly draw rate was for

⁵ Jordan's also discussed its commission plan with new sales consultants during their training period, and all new sales consultants were required to sign a Sales Compensation Program Agreement confirming that they understood Jordan's compensation policies.

⁶ As explained in more detail below, a draw is an advance on future commissions.

overtime and Sunday hours, for which Jordan's paid a premium draw rate equal to one and one-half times the Massachusetts minimum wage rate in accordance with the Overtime Statute, G. L. c. 151, § 1A, and the Sunday pay law, G. L. c. 136, § 6(50).⁷ These two types of draws were recoverable from the sales consultant's commissions as described in the preceding paragraph.⁸

On at least one occasion during his tenure, Sutton worked overtime, and on multiple occasions, he worked on Sundays. Jordan's paid him in accordance with the foregoing policy.

DISCUSSION

The crux of this dispute is whether Jordan's compensation plan for sales consultants satisfied *Sullivan v. Sleepy's LLC*, 482 Mass. 227, 236 n.16, 237 (2019) ("*Sleepy's*"), in which the Supreme Judicial Court held that employers must pay employees "separate and additional . . . payments beyond their draws and commissions" for working overtime and Sundays. The Class Action Complaint in this matter ("Complaint") contends that Jordan's compensation plan did not meet these requirements, and thus Jordan's violated the Overtime Statute (Count 1) and the Wage Act and the Sunday pay law (Count 2). The Complaint also alleges that Jordan's violated the Wage Act by requiring employees to work on Sundays without paying its employees premium pay (Count 3). Jordan's moves for summary judgment on all counts and asserts several arguments in support of its motion. Sutton has cross-moved for partial summary judgment on Counts 1 and 2 with respect to liability only. The parties' arguments are addressed below.

⁷ Effective January 1, 2019, the statutory premium rate for Sunday pay was reduced from one and one-half times to one and four-tenths the minimum wage rate.

⁸ Although working on holidays and Sundays is subject to the premium pay standards, see G. L. c. 136, §§ 6(50), and 13, at all relevant times of this dispute, Jordan's paid its sales consultants additional premium pay separate and apart from their draws and commissions when they worked on certain holidays, and such payments were not included in the formula for calculating commissions. In other words, Jordan's did not include holiday premium pay in a sales consultant's recoverable draw; holiday pay was paid to the employee on a nonrecoverable basis.

A. Standard of Review

Summary judgment shall be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). The moving party may satisfy this burden by submitting affirmative evidence negating an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis*, 410 Mass. at 716. Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond with evidence of specific facts establishing the existence of a genuine dispute. *Pederson*, 404 Mass. at 17. The opposing party cannot rest on its pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989).

When deciding a motion for summary judgment, the court considers pleadings, deposition transcripts, answers to interrogatories, admissions on file, and affidavits. Mass. R. Civ. P. 56(c). The court reviews the evidence in the light most favorable to the nonmoving party but does not weigh evidence, assess credibility, or find facts. *Attorney Gen. v. Bailey*, 386 Mass. 367, 370 (1982). Where, as here, the court is presented with cross motions for summary judgment, the standard of review is identical for both motions. *Epstein v. Board of Appeals of Boston*, 77 Mass. App. Ct. 752, 756 (2010).

B. Overview of *Sleepy's* and Whether Jordan's Compensation Plan Met the Requirements Contained Therein

Sutton asserts two claims on behalf of himself and the certified class with respect to Jordan's compensation plan. The first claim arises under the Overtime Statute, G. L. c. 151, § 1A, which requires employers to pay employees a rate of not less than one and one-half times the employee's regular rate when the employee works more than forty hours in a workweek.⁹ The second claim arises under the Wage Act, G. L. c. 149, §§ 148, 150, and the Sunday pay law, G. L. c. 136, § 6(50), which require retail employers to pay employees statutorily-defined premium compensation when they work on Sundays. The purpose behind these statutes is "to reduce the number of hours of work, encourage the employment of more persons, and compensate employees for the burden of a long workweek." *Sleepy's*, 482 Mass. at 233-234, quoting *Mullally v. Waste Mgmt. of Mass., Inc.*, 452 Mass. 526, 531 (2008). See *id.* at 239 (stating overtime statute and Sunday pay law share similar purposes).

In *Sleepy's*, the Supreme Judicial Court addressed payment arrangements for commissioned-based employees to determine whether certain arrangements satisfied the Overtime Statute and Sunday pay law. The Court ultimately held that employees who are paid on a commission basis with a recoverable draw must be paid "separate and additional payments" when they work overtime or Sundays even if their draws and commissions equaled or exceeded their total overtime and Sunday compensation. 482 Mass. at 228-229. Because this Court's interpretation of *Sleepy's* is critical to resolving the instant motions, a brief discussion of the case is warranted.

In that case, the plaintiff employees worked as salespeople at retail stores operated by the defendant employers. *Id.* at 239. Similar to Jordan's sales consultants, the plaintiffs were paid

⁹ The regular rate for Sutton and the other class members was the Massachusetts minimum wage then in effect.

on a commission-plus-draw plan involving a recoverable draw, which is an advance that the employee pays back once he or she has earned sufficient commissions. *Id.* at 239 n.7. The employees' wages consisted of a \$125 per day draw plus sales commissions earned in excess of the draw. *Id.* at 239. On at least one occasion, the employees worked more than forty hours in a week and also worked on at least one Sunday. *Id.* On these occasions, the employers did not pay the employees any additional compensation beyond their recoverable daily draw and commissions; however, the amount of compensation the employees received always equaled or exceeded their overtime and Sunday pay. *Id.* at 230. As a result, the defendant employers argued that the employees had received all compensation to which they were entitled, and thus, there could be no violation of the Overtime Statute or Sunday pay law. *Id.*

The case came before the SJC on two certified questions from the Massachusetts Federal District Court, which asked, in short, if commissioned-based employees work more than forty hours in a workweek or work on a Sunday, whether those employees are entitled to any additional compensation for those hours even if the employees' total compensation (through draws and commissions) was equal to or greater than one and one-half times the employee's regular rate or the minimum wage for all hours worked above forty hours or on a Sunday. *Id.* at 228-229. With respect to both overtime and Sunday pay, the Court concluded that it did not matter that the amount the plaintiff employees received fully compensated them for time worked; rather, the plaintiffs were entitled to "separate and additional payments" for their overtime and Sunday hours, and the draws and commissions the employees had received could not be "retroactively allocated" to cover the employers' overtime and Sunday pay obligations. See *id.* at 228.

In reaching its conclusion, the Court relied on the purpose of the Overtime Statute, regulatory guidance, and “previous case law establishing that in most circumstances, employers may not retroactively reallocate and credit payments made to fulfill one set of wage obligations against separate and independent obligations.” *Sleepy’s*, 482 Mass. at 233. As quoted above, the purpose of the Overtime Statute is “to reduce the number of hours of work, encourage the employment of more persons, and compensate employees for the burden of a long workweek.” *Id.* at 233-234, quoting *Mullally*, 452 Mass. at 531. Therefore, a compensation arrangement that pays the employee the same amount regardless of whether he or she worked forty or fifty hours a week undermines these purposes. Moreover, if employers were permitted to reallocate payments made for one purpose to a different purpose, then employers would “lack an incentive to comply with the wage and overtime statutes in the first place.” *Id.* at 236.

Unlike in *Sleepy’s*, where the plaintiff employees received a \$125.00 daily recoverable draw, Jordan’s tracked and calculated each sales consultant’s hours and “paid” the employee their applicable hourly rate for each hour worked (whether minimum wage or premium pay for working overtime or Sundays). Jordan’s claims that these sums were guaranteed and paid to the sales consultants each week and were never repaid or returned to Jordan’s. The court disagrees. Despite Jordan’s attempts to characterize its payment plan otherwise, Jordan’s paid its sales consultants exclusively through commissions and weekly draws,¹⁰ with no separate and additional amounts allocated as payment for overtime and Sundays.

According to the record evidence, Jordan’s calculated each sales consultant’s weekly compensation by deducting their recoverable draw, which included the amounts owed to the employee for regular hours worked as well as premium pay for overtime and Sundays, from the

¹⁰ Jordan’s also paid its sales consultants other types of sales-based incentive pay not relevant here.

employee's commissions and then paid the employee commissions in excess of the recoverable draw, if any. If the sales consultant did not generate enough commissions in a week to cover their draw, Jordan's carried forward that negative balance to the next payroll period and deducted it from whatever commissions the employee had earned the following week. Because the sales consultant's overtime and Sunday pay took the form of a recoverable draw that was offset by or recovered from their commissions, Jordan's, in effect, was not paying anything towards the employee's overtime and Sunday pay. In other words, Jordan's treated the sales consultant's commissions as a pool of money from which it withdrew funds to cover its statutory premium pay obligations. However, as the Court held in *Sleepy's*, this type of payment arrangement is not permissible under the Overtime and Sunday pays statutes. See 482 Mass. at 233 ("[E]mployers may not retroactively reallocate and credit payments made to fulfill one set of wage obligations against separate and independent obligations."). Other decisions of this court have reached the same conclusion with respect to compensation plans similar to Jordan's. See *Shoemaker v. Clay Family Dealerships, Inc.*, 2021 Mass. Super. LEXIS 4 at *1, *5-6 (Mass. Super. 2021); *Martinez v. Burlington Motor Sports, Inc.*, 2020 Mass. Super. LEXIS 92 at *1-8 (Mass. Super. 2020). Accordingly, the court agrees with Sutton that Jordan's failed to remit separate and additional payments to its sales consultants for overtime and Sundays, and thus, Jordan's compensation plan violated the Overtime and Sunday pay statutes.

C. Retroactive Application

Jordan's alternatively argues that it is entitled to summary judgment because *Sleepy's* should not be given retroactive application. Because this argument has been considered and rejected by several other decisions of this court, only a brief explanation is warranted. See *Martinez*, 2020 Mass. Super. LEXIS 92 at *8 n.16, and cases cited; *Sargent v. Copeland Enters.*,

2020 Mass. Super. LEXIS 653 at *2-5 (Mass. Super. 2020); *Shoemaker v. Clay Family Dealerships, Inc.*, 2020 Mass. Super. LEXIS 59 at *1 (Mass. Super. 2020); *Malebranche v. Colonial Auto. Grp., Inc.*, 2019 Mass. Super. LEXIS 1229 at *6 (Mass. Super. 2019); *Wright v. Balise Motor Sales Co.*, 2019 Mass. Super. LEXIS 593 *10-13 (Mass. Super. 2019); *Colleton v. Sentry W., Inc.*, 2019 Mass. Super. LEXIS 1248 at *2-7 (Mass. Super. 2019).

Generally, when the Supreme Judicial Court construes a statute, it gives an interpretation that reflects the Court's view of its meaning from the date of the statute's enactment; it does not analyze whether that interpretation has retroactive or prospective effect. *Eaton v. Federal Nat'l Mortg. Ass'n*, 462 Mass. 569, 587 (2012). A departure from this general rule is warranted if retroactive application "would fail to protect the reasonable expectations of the parties." *Shapiro v. Worcester*, 464 Mass. 261, 268 (2013). In making this determination, the court considers three factors: (1) whether the decision creates a novel rule; (2) whether retroactive application will serve the purposes of that rule; and (3) whether hardship, injustice, or inequity would result from retroactive application. *American Int'l Ins. Co. v. Robert Seuffer GMBH & Co. KG*, 468 Mass. 109, 120-121 (2014). Applying these factors, this Court concludes that *Sleepy's* should be given retroactive effect.

First, *Sleepy's* did not create a novel rule such that it "mark[ed] a substantial departure from prior precedent." *Id.* *Sleepy's* "did not reflect a dramatic shift in the law[.]" nor did it "contradict or overrule prior precedent." *Wright*, 2019 Mass. Super. LEXIS 593 at *11. Rather, the Court relied on three of its own recent decisions on the same issue, see *Sleepy's*, 482 Mass. at 235, as well as the plain language of 454 Code Mass. Regs. § 27.03(3) (2015), the minimum wage and overtime rates regulation, from which the Court concluded that retroactive crediting of commission payments as overtime wages was prohibited. *Id.* at 236-237.

Jordan's, nevertheless, argues that *Sleepy's* created a novel, unforeshadowed rule because it was contrary to opinion letters Jordan's had obtained and relied on from the Division of Occupational Safety ("DOS") in 2003 and 2009. Jordan's claims that these letters clearly established that employers could satisfy their overtime and Sunday pay obligations to commissioned sales consultants by paying the equivalent of one and one-half times the minimum wage for all hours worked in excess of forty hours and on a Sunday. Jordan's, however, fails to recognize that these opinion letters were identical to those the defendants had received in *Sleepy's*, see 482 Mass. at 232 n.13, 233 n.14, and the Court in that case held that although the opinion letters caused some confusion, they did not directly conflict with the text or purpose of the underlying statutes and regulation, and found that the letters correctly identified the minimum wage and overtime pay obligations as separate and independent.¹¹ *Id.* at 237 n.18. As such, the Court's holding "did not reflect a dramatic shift in the law nor contradict prior precedent but rather, relied soundly upon prior case precedent from other SJC cases and the Code of Mass. Regulations." *Sargent*, 2020 Mass. Super. LEXIS 653 at *4.

Additionally, Jordan's argues that because the Court characterized the questions in *Sleepy's* as ones of "first impression," it necessarily follows that the principles of law contained therein are novel and could not have been predicted. 482 Mass. at 228. This argument is also without merit. "The fact that the question had not been answered before . . . does not mean that it represented a 'new' interpretation." *McIntire, petitioner*, 458 Mass. 257, 262 (2010).

As to the second factor of the retroactive test, retroactive application of *Sleepy's* is consistent with the purposes of the Overtime Statute and Sunday pay law. In fact, the Court

¹¹ In discussing the significance of the opinion letters, the Court noted, "An opinion letter interpreting a statute or regulation does not have the binding force attributable to a full blown regulation[,] . . . [and] [w]e will generally defer . . . to an agency's interpretation . . . if it is not contradicted by the text or purpose of the underlying statute" (citation and internal quotations omitted). *Id.* at 232 n.11.

specifically relied on the language and purposes of those statutes in reaching its conclusion. *Sleepy's*, 482 Mass. at 233. Therefore, it would be illogical to limit the application of the holding in *Sleepy's* to prospective cases.

Furthermore, Jordan's contention that retroactive application cannot right the wrongs of past work hours or change employers' past hiring practices is unavailing. "[I]f the Court subscribed to . . . [Jordan's] contention that retroactive application is unnecessary because the past cannot be changed, there would rarely be a case in which a rule was not applied prospectively." *Colleton*, 2019 Mass. Super. LEXIS 1238 at *6.

Finally, retroactive application of *Sleepy's* will not result in inequity or hardship to Jordan's. Jordan's argues that it relied in good faith on the DOS opinion letters and that the DOS mislead Jordan's into believing its compensation practices were lawful. However, as discussed in *Sleepy's* and above, the letters did not permit the payment practices employed by Jordan's; therefore, any reliance on the DOS letters was not justifiable. *Sleepy's*, 482 Mass. at 236-237. Although Jordan's contends that retroactive application would put an enormous financial strain on employers already struggling by the severe disruptions caused by the COVID-19 pandemic, Jordan's has not articulated a specific and unique hardship it would suffer that would outweigh the inequitable result of Sutton and the class being denied wages to which they are entitled.

Accordingly, Jordan's arguments against retroactive application are without merit.

D. Constitutionality of Overtime Regulation Cited in *Sleepy's*

Jordan's also makes several arguments that the overtime regulation, 454 Code Mass. Regs. § 27.03(3) (2015), upon which *Sleepy's* partially relies, is unconstitutional as applied to Jordan's compensation plan. The court disagrees.

The regulation states:

“Overtime Rate. One and one half times an employee’s regular hourly rate, such regular hourly rate not to be less than the basic minimum wage, for work in excess of 40 hours in a work week, except as set forth in M.G.L. c. 151A, § 1A. . . . Whether a nonexempt employee is paid on an hourly, piece work, salary, or any other basis, such payments shall not serve to compensate the employee for any portion of the overtime rate for hours worked over 40 in a work week, except that this limitation applies only to the ‘one-half’ portion of the overtime rate (one and ‘one-half’ times an employee’s regular hourly rate) when overtime is determined on a *bona fide* fluctuating workweek basis” (emphasis in original).

454 Code Mass. Regs., § 27.03(3) (2015).

First, Jordan’s argues that Section 27.03(3) is unconstitutionally vague because it does not provide fair notice of what it prohibits or requires “so that persons of common intelligence may conform their conduct to the law.” *Schoeller v. Board of Registration of Funeral Dirs. & Embalmers*, 463 Mass. 605, 611 (2012). Jordan’s contends that the regulation fails this test because whether an employee is paid on an “hourly, piece work, salary, or any other basis” draws in all conceivable forms of compensation, which means that even the payment of hourly overtime premium pay would not count towards the employer’s obligation to pay overtime pay. 454 Code Mass. Regs., § 27.03(3) (2015) (emphasis added). However, the court finds such an interpretation to be nonsensical.

In *Sleepy*’s, the Court held that the plain language of Section 27.03(3) prohibits crediting payments against an employer’s overtime obligations, and thus, the regulation entitles employees to separate and additional overtime payments beyond draws and commissions. 482 Mass. at 236-237. Although there is some confusion by the reference to “portion of the overtime rate” as opposed to a “portion of the employee’s wages paid at the overtime rate,” it is clear that the phrase “regular hourly rate” is “being used as a variable in a formula for calculating the hourly overtime rate of pay.” *Id.* at 237 n.17 (emphasis added). “There is no indication that, because commissions and drawing accounts are excluded from the calculation of this variable, the

Legislature intended to allow employers to credit commissions against overtime obligations.”

Sleepy’s, 482 Mass. at 237 n.17. In other words, Section 27.03(3) merely provides guidance on how to calculate the minimum amount of compensation that an employee must receive for overtime hours.

Second, Jordan’s argues that Section 27.03(3) conflicts with the minimum wage law, G. L. c. 151, § 1, because Jordan’s paid its sales consultants hourly premium pay for all overtime and Sunday hours; therefore, if the regulation were applied to Jordan’s in the same manner as in *Sleepy’s*, Jordan’s would be required to pay its sales consultants twice for the same overtime and Sunday hours. This argument is not persuasive either. As discussed throughout this decision, the court disagrees that Jordan’s, in fact, paid its sales consultants separate and additional overtime and Sunday premium pay.¹²

Third, the court disagrees with Jordan’s that the Court in *Sleepy’s* relied heavily on Section 27.03(3). It is evident from the length and substance of the Court’s discussion that the Court primarily based its decision on the purpose of the Overtime Statute and Sunday pay law as well as its own recent decisions, which demonstrated that the Overtime Statute required separate and additional overtime compensation to be provided to the employee regardless of whether the employee received a recoverable draw or commission equal to or exceeding the overtime and premium pay rate. 482 Mass. at 235. The Court’s brief discussion of the plain language of Section 27.03(3) merely signified that the regulation similarly prohibited retroactive crediting of

¹² To the extent that Jordan’s argues that the SJC’s application of Section 27.03(3) to Sunday premium pay is unconstitutional and invalid, this argument also fails. In *Sleepy’s*, the Court held that an employee’s entitlement to separate and additional Sunday premium pay stems from the purpose of the Sunday pay law, which shares the same purpose as the Overtime Statute, G. L. c. 151, § 1A. 482 Mass. at 239. Therefore, the basis for awarding Sunday premium pay is found in the Sunday pay law, G. L. c. 136, § 6(50), not the regulations, and as a result, the scope of Section 27.03(3) is irrelevant with respect to Sunday pay.

payments against an employer's overtime obligations when those payments are made for a different purpose. *Sleepy's*, 482 Mass. at 236.

Finally, Jordan's argues that the purpose of Section 27.03(3) is to address the fluctuating workweek method of calculating overtime, which is inapplicable in this case. This argument is also unavailing. The plain language of the regulation speaks for itself, and the Court in *Sleepy's* implicitly held that the fluctuating workweek proviso in Section 27.03(3) had no limitation on or application in that case. *Id.* at. 232 n.10.

Accordingly, Jordan's constitutional arguments also fail.

E. Private Right of Action for Wage Act claims

Counts 2 and 3 of the Complaint assert claims under the Wage Act, G. L. c. 149, §§ 148, 150, for alleged violations of the Sunday pay statute, also known as a Blue Law or Sunday closing law, G. L. c. 136, §§ 6(50). See *Zayre Corp. v. Attorney Gen.*, 372 Mass. 423, 424 (1977) ("Laws which regulate trade and commerce on Sundays have been in existence in this Commonwealth and elsewhere since colonial times."). Jordan's argues that summary judgment in its favor is warranted on these claims because there is no private right of action for Sunday pay violations. The court disagrees with respect to Count 2 but agrees as to Count 3.

The Wage Act's enforcement section, G. L. c. 149, § 150, para. 2, lists twelve statutes for which a violation thereof creates a private right of action under the Wage Act. Jordan's argues that because the Sunday pay law is not among those enumerated, there is no private right of action in this case. This argument is unavailing.

First, the existence of a private right of action to recover unpaid Sunday pay under the Wage Act was implicitly recognized by the Court in *Sleepy's*, 482 Mass. at 230, and the Appeals Court has explicitly held that employees can seek unpaid wages pursuant to the Wage Act for

violations of other Blue laws. See *Drive-O-Rama, Inc. v. Attorney Gen.*, 63 Mass. App. Ct. 769, 769-770 (2005) (holding employer's failure to pay premium pay for work performed on legal holidays under G. L. c. 136, § 13 violated Wage Act). Likewise, other decisions of this court have concluded that employees may pursue wages under the Wage Act for Sunday pay law violations. See *Shoemaker*, 2021 Mass. Super. LEXIS 4 at *6-7 (concluding Wage Act affords plaintiff private right of action to recover unpaid Sunday and holiday pay); *Bassett v. Triton Techs., Inc.*, 2017 Mass. Super. LEXIS 32 at *4 (Mass. Super. 2017) ("The statutory right of action created under the Wage Act encompasses claims that an employee who worked on a Sunday has not been paid the higher wage required under G. L. c. 136, § 6(50).").

Second, Jordan's reliance on *Donis v. American Waste Services, LLC*, 485 Mass. 257 (2020), is misplaced. In *Donis*, the plaintiffs sued their employer, claiming that for several years, they were paid less than the wages required by the Prevailing Wage Act, G. L. c. 149, §§ 26-27H, which mandates the payment of wages for certain public project workers. *Id.* at 258. The plaintiffs claimed that by violating the Prevailing Wage Act, the defendants also violated the Wage Act, G. L. c. 149, §§ 148, 150. *Id.* On appeal, the Court held that the plaintiffs could not recover under the Wage Act for a violation of the Prevailing Wage Act because permitting them to do so would provide them with a duplicative means of recovery, which "would render the remedies provided by the Prevailing Wage Act meaningless." *Id.* The Court further held that the plaintiffs could not "avoid the limitations that the Prevailing Wage Act . . . [placed] on their recovery by pursuing an otherwise duplicative claim under the Wage Act."¹³ *Id.* Unlike in *Donis*, here there are no private remedies set forth in the Sunday pay law; therefore, Sutton and the certified class are not pursuing an otherwise duplicative claim under the Wage Act or

¹³ Under the Wage Act, the plaintiffs would have been entitled to recover directly from corporate officers, whereas under the Prevailing Wage Act, they could not. *Id.*

attempting to avoid conflicting limitations under the Sunday pay statute because no such limitations exist. For these reasons, a private right of action exists with respect to claims for unpaid wages for Sunday pay violations.

However, turning to the substance of Suttons' two Wage Act claims, it appears that there are no notable distinctions between these claims. As a result, the court will enter summary judgment on Count 3 on the ground that it is redundant of Count 2. Count 2 specifically alleges that Jordan's violated the Wage Act by failing to pay sales consultants premium pay for working Sundays and Count 3 similarly alleges that Jordan's violated the Wage Act by requiring sales consultants to work on Sundays without paying employees the premium rate. To the extent that Count 3 asserts a statutory claim, in other words, it is a claim not relating to the payment of wages but rather to a violation of the Sunday work requirement in G. L. c. 136, § 6(50), the court agrees with Jordan's that no private right of action for such a claim exists. See *Salvas v. Wal-mart Stores, Inc.*, 452 Mass. 337, 372-373 (2008) (concluding violation of meal break statute, G. L. c. 149, § 100, did not create private right of action). Because each claim is merely a restatement of the other, the court will enter summary judgment in Jordan's favor on Count 3.

Accordingly, Jordan's motion for summary judgment on Count 3 (requiring work on Sundays) is **ALLOWED**.

F. Sutton's Partial Motion for Summary Judgment

Because the court finds that Jordan's compensation plan violated the requirements set forth in *Sleepy's*, Sutton's partial motion for summary judgment as to liability on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay) is **ALLOWED**, and Jordan's motion for summary judgment on those claims is **DENIED**.

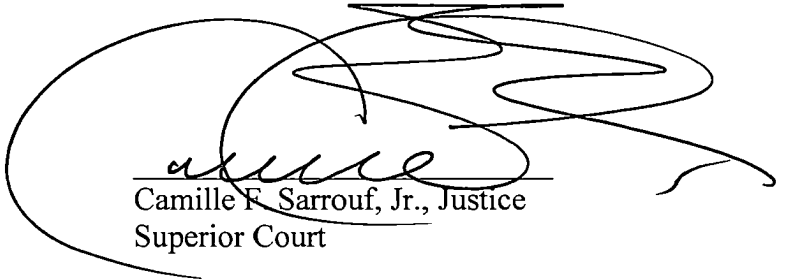
ORDER

For the foregoing reasons, it is hereby **ORDERED** that Jordan's motion for summary judgment is **ALLOWED** on Count 3 (requiring work on Sundays), but is otherwise **DENIED**.

It is further **ORDERED** that Sutton's partial motion for summary judgment on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay) is **ALLOWED** as to liability.

The court will schedule a status conference to address further proceedings in conjunction with this Decision and Order.

September 22, 2021



Camille F. Sarrouf, Jr., Justice
Superior Court

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

MATTHEW SUTTON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

JORDAN'S FURNITURE, INC.,

Defendant.

Civil Action No. 19-01763

JUDGMENT

Pursuant to Mass. R. Civ. P. 58(a), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment, final judgment is hereby entered as follows:

1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of:

- (a) \$2,696,992.16, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1;
- (b) \$5,393,984.32, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B, and payable to each class member in the amounts as set forth in Exhibit 1; and
- (c) prejudgment interest in the total amount of \$767,866.92, payable to each class member in the amounts as set forth in Exhibit 1.

2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.

Dated: 11.1.21

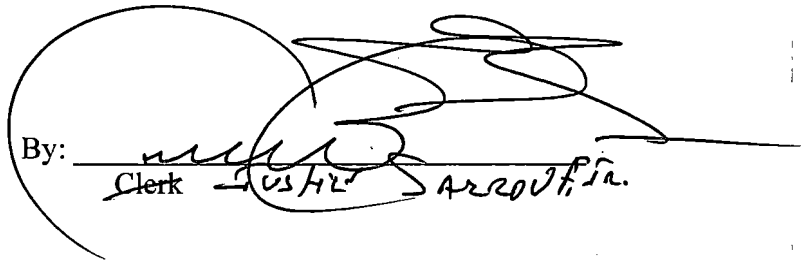
By: 
Clerk Justine Sarroff

Exhibit 1

<u>Class Member Number</u>	<u>Single Damages</u>	<u>Treble Damages</u>	<u>Interest on Single Damages (calculated by day)</u>	<u>TOTAL DAMAGES (Treble Damages + Interest)</u>	6/19/19 11/1/21 866	COMPLAINT FILED DATE OF JUDGMENT NUMBER OF DAYS
1	\$11,264.47	\$ 33,793.41	\$ 3,207.13	\$ 37,000.54		
2	\$5,296.69	\$ 15,890.07	\$ 1,508.03	\$ 17,398.10		
3	\$16,036.77	\$ 48,110.31	\$ 4,565.87	\$ 52,676.18		
4	\$17,122.38	\$ 51,367.14	\$ 4,874.95	\$ 56,242.09		
5	\$17,132.37	\$ 51,397.11	\$ 4,877.80	\$ 56,274.91		
6	\$16,229.88	\$ 48,689.64	\$ 4,620.85	\$ 53,310.49		
7	\$7,086.02	\$ 21,258.06	\$ 2,017.48	\$ 23,275.54		
8	\$15,136.13	\$ 45,408.39	\$ 4,309.44	\$ 49,717.83		
9	\$1,587.90	\$ 4,763.70	\$ 452.09	\$ 5,215.79		
10	\$17,426.81	\$ 52,280.43	\$ 4,961.63	\$ 57,242.06		
11	\$16,347.02	\$ 49,041.06	\$ 4,654.20	\$ 53,695.26		
12	\$14,892.05	\$ 44,676.15	\$ 4,239.95	\$ 48,916.10		
13	\$16,524.60	\$ 49,573.80	\$ 4,704.76	\$ 54,278.56		
14	\$13,895.78	\$ 41,687.34	\$ 3,956.30	\$ 45,643.64		
15	\$16,879.49	\$ 50,638.47	\$ 4,805.80	\$ 55,444.27		
16	\$9,884.97	\$ 29,654.91	\$ 2,814.37	\$ 32,469.28		
17	\$17,661.02	\$ 52,983.06	\$ 5,028.31	\$ 58,011.37		
18	\$16,085.17	\$ 48,255.51	\$ 4,579.65	\$ 52,835.16		
19	\$15,904.84	\$ 47,714.52	\$ 4,528.30	\$ 52,242.82		
20	\$15,464.18	\$ 46,392.54	\$ 4,402.84	\$ 50,795.38		
21	\$3,241.85	\$ 9,725.55	\$ 922.99	\$ 10,648.54		
22	\$17,008.99	\$ 51,026.97	\$ 4,842.67	\$ 55,869.64		
23	\$15,247.05	\$ 45,741.15	\$ 4,341.02	\$ 50,082.17		
24	\$17,110.98	\$ 51,332.94	\$ 4,871.71	\$ 56,204.65		
25	\$3,523.34	\$ 10,570.02	\$ 1,003.14	\$ 11,573.16		
26	\$14,016.70	\$ 42,050.10	\$ 3,990.73	\$ 46,040.83		
27	\$3,502.09	\$ 10,506.27	\$ 997.09	\$ 11,503.36		
28	\$9,202.28	\$ 27,606.84	\$ 2,620.00	\$ 30,226.84		
29	\$17,369.55	\$ 52,108.65	\$ 4,945.33	\$ 57,053.98		
30	\$9,191.66	\$ 27,574.98	\$ 2,616.98	\$ 30,191.96		
31	\$13,228.05	\$ 39,684.15	\$ 3,766.19	\$ 43,450.34		
32	\$14,809.80	\$ 44,429.40	\$ 4,216.53	\$ 48,645.93		
33	\$13,964.39	\$ 41,893.17	\$ 3,975.83	\$ 45,869.00		
34	\$13,436.23	\$ 40,308.69	\$ 3,825.46	\$ 44,134.15		
35	\$15,542.12	\$ 46,626.36	\$ 4,425.03	\$ 51,051.39		
36	\$14,754.05	\$ 44,262.15	\$ 4,200.66	\$ 48,462.81		
37	\$19,593.34	\$ 58,780.02	\$ 5,578.47	\$ 64,358.49		
38	\$14,820.36	\$ 44,461.08	\$ 4,219.54	\$ 48,680.62		
39	\$19,086.89	\$ 57,260.67	\$ 5,434.27	\$ 62,694.94		
40	\$13,255.49	\$ 39,766.47	\$ 3,774.00	\$ 43,540.47		
41	\$13,968.02	\$ 41,904.06	\$ 3,976.87	\$ 45,880.93		
42	\$14,348.04	\$ 43,044.12	\$ 4,085.06	\$ 47,129.18		
43	\$9,795.47	\$ 29,386.41	\$ 2,788.89	\$ 32,175.30		
44	\$3,722.40	\$ 11,167.20	\$ 1,059.81	\$ 12,227.01		
45	\$18,416.88	\$ 55,250.64	\$ 5,243.51	\$ 60,494.15		
46	\$1,518.75	\$ 4,556.25	\$ 432.41	\$ 4,988.66		
47	\$9,396.86	\$ 28,190.58	\$ 2,675.40	\$ 30,865.98		
48	\$14,808.90	\$ 44,426.70	\$ 4,216.28	\$ 48,642.98		
49	\$9,205.71	\$ 27,617.13	\$ 2,620.98	\$ 30,238.11		
50	\$3,663.34	\$ 10,990.02	\$ 1,043.00	\$ 12,033.02		
51	\$715.63	\$ 2,146.89	\$ 203.75	\$ 2,350.64		
52	\$10,794.15	\$ 32,382.45	\$ 3,073.23	\$ 35,455.68		
53	\$14,563.47	\$ 43,690.41	\$ 4,146.40	\$ 47,836.81		
54	\$24,720.65	\$ 74,161.95	\$ 7,038.27	\$ 81,200.22		

55	\$1,998.09	\$	5,994.27	\$	568.88	\$	6,563.15
56	\$18,006.91	\$	54,020.73	\$	5,126.79	\$	59,147.52
57	\$18,659.57	\$	55,978.71	\$	5,312.61	\$	61,291.32
58	\$1,291.24	\$	3,873.72	\$	367.63	\$	4,241.35
59	\$16,168.49	\$	48,505.47	\$	4,603.37	\$	53,108.84
60	\$18,712.76	\$	56,138.28	\$	5,327.75	\$	61,466.03
61	\$14,799.61	\$	44,398.83	\$	4,213.63	\$	48,612.46
62	\$363.38	\$	1,090.14	\$	103.46	\$	1,193.60
63	\$17,026.98	\$	51,080.94	\$	4,847.79	\$	55,928.73
64	\$10,320.09	\$	30,960.27	\$	2,938.26	\$	33,898.53
65	\$16,083.25	\$	48,249.75	\$	4,579.10	\$	52,828.85
66	\$14,950.07	\$	44,850.21	\$	4,256.47	\$	49,106.68
67	\$13,255.76	\$	39,767.28	\$	3,774.08	\$	43,541.36
68	\$17,709.58	\$	53,128.74	\$	5,042.14	\$	58,170.88
69	\$16,003.82	\$	48,011.46	\$	4,556.48	\$	52,567.94
70	\$9,431.09	\$	28,293.27	\$	2,685.15	\$	30,978.42
71	\$14,066.35	\$	42,199.05	\$	4,004.86	\$	46,203.91
72	\$1,581.38	\$	4,744.14	\$	450.24	\$	5,194.38
73	\$14,829.63	\$	44,488.89	\$	4,222.18	\$	48,711.07
74	\$15,480.62	\$	46,441.86	\$	4,407.52	\$	50,849.38
75	\$15,006.55	\$	45,019.65	\$	4,272.55	\$	49,292.20
76	\$15,997.09	\$	47,991.27	\$	4,554.57	\$	52,545.84
77	\$10,747.52	\$	32,242.56	\$	3,059.95	\$	35,302.51
78	\$9,392.42	\$	28,177.26	\$	2,674.14	\$	30,851.40
79	\$13,070.63	\$	39,211.89	\$	3,721.37	\$	42,933.26
80	\$15,197.59	\$	45,592.77	\$	4,326.94	\$	49,919.71
81	\$15,447.45	\$	46,342.35	\$	4,398.08	\$	50,740.43
82	\$13,730.50	\$	41,191.50	\$	3,909.24	\$	45,100.74
83	\$16,958.12	\$	50,874.36	\$	4,828.19	\$	55,702.55
84	\$17,271.83	\$	51,815.49	\$	4,917.50	\$	56,732.99
85	\$14,203.45	\$	42,610.35	\$	4,043.90	\$	46,654.25
86	\$5,308.79	\$	15,926.37	\$	1,511.48	\$	17,437.85
87	\$18,018.95	\$	54,056.85	\$	5,130.22	\$	59,187.07
88	\$462.30	\$	1,386.90	\$	131.62	\$	1,518.52
89	\$15,539.63	\$	46,618.89	\$	4,424.32	\$	51,043.21
90	\$16,766.27	\$	50,298.81	\$	4,773.56	\$	55,072.37
91	\$4,050.60	\$	12,151.80	\$	1,153.26	\$	13,305.06
92	\$14,678.79	\$	44,036.37	\$	4,179.23	\$	48,215.60
93	\$15,816.62	\$	47,449.86	\$	4,503.19	\$	51,953.05
94	\$4,387.86	\$	13,163.58	\$	1,249.28	\$	14,412.86
95	\$16,820.87	\$	50,462.61	\$	4,789.11	\$	55,251.72
96	\$16,094.49	\$	48,283.47	\$	4,582.30	\$	52,865.77
97	\$10,992.10	\$	32,976.30	\$	3,129.59	\$	36,105.89
98	\$17,759.80	\$	53,279.40	\$	5,056.43	\$	58,335.83
99	\$15,763.97	\$	47,291.91	\$	4,488.20	\$	51,780.11
100	\$17,559.00	\$	52,677.00	\$	4,999.26	\$	57,676.26
101	\$18,045.71	\$	54,137.13	\$	5,137.84	\$	59,274.97
102	\$16,686.47	\$	50,059.41	\$	4,750.84	\$	54,810.25
103	\$17,352.54	\$	52,057.62	\$	4,940.48	\$	56,998.10
104	\$17,409.41	\$	52,228.23	\$	4,956.67	\$	57,184.90
105	\$15,771.39	\$	47,314.17	\$	4,490.31	\$	51,804.48
106	\$15,961.83	\$	47,885.49	\$	4,544.53	\$	52,430.02
107	\$15,510.32	\$	46,530.96	\$	4,415.98	\$	50,946.94
108	\$17,084.41	\$	51,253.23	\$	4,864.14	\$	56,117.37
109	\$14,308.36	\$	42,925.08	\$	4,073.77	\$	46,998.85
110	\$7,894.09	\$	23,682.27	\$	2,247.54	\$	25,929.81

111	\$16,049.76	\$	48,149.28	\$	4,569.56	\$	52,718.84
112	\$9,297.14	\$	27,891.42	\$	2,647.01	\$	30,538.43
113	\$8,465.20	\$	25,395.60	\$	2,410.15	\$	27,805.75
114	\$14,534.99	\$	43,604.97	\$	4,138.29	\$	47,743.26
115	\$15,470.00	\$	46,410.00	\$	4,404.50	\$	50,814.50
116	\$17,979.36	\$	53,938.08	\$	5,118.95	\$	59,057.03
117	\$3,814.27	\$	11,442.81	\$	1,085.97	\$	12,528.78
118	\$9,488.96	\$	28,466.88	\$	2,701.62	\$	31,168.50
119	\$14,078.10	\$	42,234.30	\$	4,008.21	\$	46,242.51
120	\$4,622.39	\$	13,867.17	\$	1,316.05	\$	15,183.22
121	\$391.35	\$	1,174.05	\$	111.42	\$	1,285.47
122	\$13,587.62	\$	40,762.86	\$	3,868.56	\$	44,631.42
123	\$12,250.91	\$	36,752.73	\$	3,487.99	\$	40,240.72
124	\$11,914.60	\$	35,743.80	\$	3,392.23	\$	39,136.03
125	\$16,474.01	\$	49,422.03	\$	4,690.35	\$	54,112.38
126	\$16,548.60	\$	49,645.80	\$	4,711.59	\$	54,357.39
127	\$17,815.10	\$	53,445.30	\$	5,072.18	\$	58,517.48
128	\$15,681.79	\$	47,045.37	\$	4,464.80	\$	51,510.17
129	\$14,683.15	\$	44,049.45	\$	4,180.47	\$	48,229.92
130	\$13,618.76	\$	40,856.28	\$	3,877.43	\$	44,733.71
131	\$16,202.82	\$	48,608.46	\$	4,613.14	\$	53,221.60
132	\$15,954.35	\$	47,863.05	\$	4,542.40	\$	52,405.45
133	\$781.95	\$	2,345.85	\$	222.63	\$	2,568.48
134	\$8,787.91	\$	26,363.73	\$	2,502.03	\$	28,865.76
135	\$14,927.23	\$	44,781.69	\$	4,249.97	\$	49,031.66
136	\$16,897.40	\$	50,692.20	\$	4,810.90	\$	55,503.10
137	\$11,059.62	\$	33,178.86	\$	3,148.81	\$	36,327.67
138	\$1,629.08	\$	4,887.24	\$	463.82	\$	5,351.06
139	\$1,206.24	\$	3,618.72	\$	343.43	\$	3,962.15
140	\$1,422.80	\$	4,268.40	\$	405.09	\$	4,673.49
141	\$1,425.66	\$	4,276.98	\$	405.90	\$	4,682.88
142	\$1,799.30	\$	5,397.90	\$	512.28	\$	5,910.18
143	\$939.28	\$	2,817.84	\$	267.42	\$	3,085.26
144	\$809.60	\$	2,428.80	\$	230.50	\$	2,659.30
145	\$746.58	\$	2,239.74	\$	212.56	\$	2,452.30
146	\$546.66	\$	1,639.98	\$	155.64	\$	1,795.62
147	\$601.26	\$	1,803.78	\$	171.19	\$	1,974.97
148	\$596.56	\$	1,789.68	\$	169.85	\$	1,959.53
149	\$9,920.09	\$	29,760.27	\$	2,824.37	\$	32,584.64
150	\$16,524.94	\$	49,574.82	\$	4,704.85	\$	54,279.67
151	\$9,494.40	\$	28,483.20	\$	2,703.17	\$	31,186.37
152	\$15,943.61	\$	47,830.83	\$	4,539.34	\$	52,370.17
153	\$5,885.72	\$	17,657.16	\$	1,675.74	\$	19,332.90
154	\$15,200.25	\$	45,600.75	\$	4,327.70	\$	49,928.45
155	\$16,077.41	\$	48,232.23	\$	4,577.44	\$	52,809.67
156	\$6,986.24	\$	20,958.72	\$	1,989.07	\$	22,947.79
157	\$15,562.56	\$	46,687.68	\$	4,430.85	\$	51,118.53
158	\$17,126.87	\$	51,380.61	\$	4,876.23	\$	56,256.84
159	\$14,379.77	\$	43,139.31	\$	4,094.10	\$	47,233.41
160	\$15,082.28	\$	45,246.84	\$	4,294.11	\$	49,540.95
161	\$598.92	\$	1,796.76	\$	170.52	\$	1,967.28
162	\$9,987.80	\$	29,963.40	\$	2,843.65	\$	32,807.05
163	\$8,140.23	\$	24,420.69	\$	2,317.62	\$	26,738.31
164	\$14,052.05	\$	42,156.15	\$	4,000.79	\$	46,156.94
165	\$16,389.35	\$	49,168.05	\$	4,666.25	\$	53,834.30
166	\$17,527.04	\$	52,581.12	\$	4,990.16	\$	57,571.28

167	\$1,015.05	\$	3,045.15	\$	289.00	\$	3,334.15
168	\$11,537.22	\$	34,611.66	\$	3,284.79	\$	37,896.45
169	\$10,735.25	\$	32,205.75	\$	3,056.46	\$	35,262.21
170	\$242.55	\$	727.65	\$	69.06	\$	796.71
171	\$16,345.04	\$	49,035.12	\$	4,653.63	\$	53,688.75
172	\$17,453.03	\$	52,359.09	\$	4,969.09	\$	57,328.18
173	\$19,287.02	\$	57,861.06	\$	5,491.25	\$	63,352.31
174	\$7,869.12	\$	23,607.36	\$	2,240.44	\$	25,847.80
175	\$13,898.23	\$	41,694.69	\$	3,957.00	\$	45,651.69
176	\$10,336.33	\$	31,008.99	\$	2,942.88	\$	33,951.87
177	\$16,535.72	\$	49,607.16	\$	4,707.92	\$	54,315.08
178	\$15,165.47	\$	45,496.41	\$	4,317.80	\$	49,814.21
179	\$3,605.96	\$	10,817.88	\$	1,026.66	\$	11,844.54
180	\$15,286.54	\$	45,859.62	\$	4,352.27	\$	50,211.89
181	\$18,402.23	\$	55,206.69	\$	5,239.34	\$	60,446.03
182	\$6,512.58	\$	19,537.74	\$	1,854.21	\$	21,391.95
183	\$14,523.49	\$	43,570.47	\$	4,135.02	\$	47,705.49
184	\$1,304.55	\$	3,913.65	\$	371.42	\$	4,285.07
185	\$7,036.58	\$	21,109.74	\$	2,003.40	\$	23,113.14
186	\$15,552.57	\$	46,657.71	\$	4,428.01	\$	51,085.72
187	\$11,999.28	\$	35,997.84	\$	3,416.34	\$	39,414.18
188	\$16,140.59	\$	48,421.77	\$	4,595.42	\$	53,017.19
189	\$17,502.87	\$	52,508.61	\$	4,983.28	\$	57,491.89
190	\$5,668.16	\$	17,004.48	\$	1,613.80	\$	18,618.28
191	\$11,502.90	\$	34,508.70	\$	3,275.02	\$	37,783.72
192	\$501.30	\$	1,503.90	\$	142.73	\$	1,646.63
193	\$9,000.49	\$	27,001.47	\$	2,562.55	\$	29,564.02
194	\$2,758.66	\$	8,275.98	\$	785.42	\$	9,061.40
195	\$16,033.37	\$	48,100.11	\$	4,564.90	\$	52,665.01
196	\$17,453.69	\$	52,361.07	\$	4,969.28	\$	57,330.35
197	\$5,162.37	\$	15,487.11	\$	1,469.79	\$	16,956.90
198	\$16,591.96	\$	49,775.88	\$	4,723.94	\$	54,499.82
199	\$4,200.87	\$	12,602.61	\$	1,196.04	\$	13,798.65
200	\$16,536.17	\$	49,608.51	\$	4,708.05	\$	54,316.56
201	\$17,254.70	\$	51,764.10	\$	4,912.63	\$	56,676.73
202	\$18,905.42	\$	56,716.26	\$	5,382.61	\$	62,098.87
203	\$12,691.06	\$	38,073.18	\$	3,613.30	\$	41,686.48
204	\$16,611.39	\$	49,834.17	\$	4,729.47	\$	54,563.64
205	\$6,364.42	\$	19,093.26	\$	1,812.03	\$	20,905.29
206	\$10,534.63	\$	31,603.89	\$	2,999.34	\$	34,603.23
207	\$471.91	\$	1,415.73	\$	134.36	\$	1,550.09
208	\$324.56	\$	973.68	\$	92.41	\$	1,066.09
209	\$2,834.18	\$	8,502.54	\$	806.93	\$	9,309.47
210	\$9,803.37	\$	29,410.11	\$	2,791.14	\$	32,201.25
211	\$959.72	\$	2,879.16	\$	273.24	\$	3,152.40
212	\$13,395.12	\$	40,185.36	\$	3,813.76	\$	43,999.12
213	\$15,494.59	\$	46,483.77	\$	4,411.50	\$	50,895.27
214	\$4,235.64	\$	12,706.92	\$	1,205.94	\$	13,912.86
215	\$4,345.53	\$	13,036.59	\$	1,237.23	\$	14,273.82
216	\$8,695.46	\$	26,086.38	\$	2,475.70	\$	28,562.08
217	\$9,941.91	\$	29,825.73	\$	2,830.58	\$	32,656.31
218	\$1,411.27	\$	4,233.81	\$	401.81	\$	4,635.62
219	\$2,579.15	\$	7,737.45	\$	734.32	\$	8,471.77
220	\$2,392.55	\$	7,177.65	\$	681.19	\$	7,858.84
221	\$10,594.27	\$	31,782.81	\$	3,016.32	\$	34,799.13
222	\$14,201.38	\$	42,604.14	\$	4,043.31	\$	46,647.45

223	\$11,051.57	\$	33,154.71	\$	3,146.52	\$	36,301.23
224	\$3,862.24	\$	11,586.72	\$	1,099.63	\$	12,686.35
225	\$2,131.68	\$	6,395.04	\$	606.92	\$	7,001.96
226	\$10,928.74	\$	32,786.22	\$	3,111.55	\$	35,897.77
227	\$8,757.18	\$	26,271.54	\$	2,493.28	\$	28,764.82
228	\$9,295.98	\$	27,887.94	\$	2,646.68	\$	30,534.62
229	\$8,789.23	\$	26,367.69	\$	2,502.40	\$	28,870.09
230	\$6,791.21	\$	20,373.63	\$	1,933.54	\$	22,307.17
231	\$3,590.98	\$	10,772.94	\$	1,022.40	\$	11,795.34
232	\$4,637.70	\$	13,913.10	\$	1,320.41	\$	15,233.51
233	\$6,940.72	\$	20,822.16	\$	1,976.11	\$	22,798.27
234	\$3,939.76	\$	11,819.28	\$	1,121.70	\$	12,940.98
235	\$5,636.12	\$	16,908.36	\$	1,604.67	\$	18,513.03
236	\$5,168.36	\$	15,505.08	\$	1,471.50	\$	16,976.58
237	\$2,901.80	\$	8,705.40	\$	826.18	\$	9,531.58
238	\$6,226.70	\$	18,680.10	\$	1,772.82	\$	20,452.92
239	\$2,046.81	\$	6,140.43	\$	582.75	\$	6,723.18
240	\$3,090.54	\$	9,271.62	\$	879.91	\$	10,151.53
241	\$3,658.12	\$	10,974.36	\$	1,041.51	\$	12,015.87
242	\$2,963.79	\$	8,891.37	\$	843.83	\$	9,735.20
243	\$1,719.16	\$	5,157.48	\$	489.47	\$	5,646.95
244	\$1,336.20	\$	4,008.60	\$	380.43	\$	4,389.03
245	\$4,955.03	\$	14,865.09	\$	1,410.76	\$	16,275.85
246	\$3,267.44	\$	9,802.32	\$	930.28	\$	10,732.60
247	\$4,377.36	\$	13,132.08	\$	1,246.29	\$	14,378.37
	\$2,696,992.16	\$	8,090,976.48	\$	767,866.92	\$	8,858,843.40

Endorsement on Motion to amend judgment and petition for fees (#0.0): Other action taken EXPANDED ENDORSEMENT on plaintiff's motion to amend judgment and petition for fees and costs. The crux of the dispute was whether defendant's compensation plan for sales consultants satisfied *Sullivan v. Sleepy's LLC*, 482 Mass. 227, 236 n.16, 237 (2019) ("Sleepy's"), in which the Supreme Judicial Court held that employers must pay employees "separate and additional" . . . payments beyond their draws and commissions' for working overtime and Sundays. The Class Action Complaint ("Complaint") contended that defendant's compensation plan did not meet the requirements, and thus defendant violated the Overtime Statute (Count 1) and the Wage Act and the Sunday pay law (Count 2). The Complaint also alleged that defendant violated the Wage Act by requiring employees to work on Sundays without paying its employees premium pay (Count 3). Defendant moved for summary judgment on all counts and plaintiff cross-moved for partial summary judgment on Counts 1 and 2 with respect to liability only. Following this Court's decision, dated September 22, 2021, where this Court Allowed defendant's motion on Count 3 (requiring work on Sundays) only and Allowed plaintiff's partial motion for summary judgment on Count 1 (failure to pay overtime) and Count 2 (failure to pay Sunday premium pay), plaintiff filed the present motion and a hearing on the motion was held on December 21, 2021. Plaintiff seeks their full measure of fees and costs as well as a loadstar multiplier related to the \$8,8MM judgment obtained. Defendant challenges and seeks a reduction of the hourly rate , total hours worked, costs, and opposes any multiplier whatsoever in response. A detailed review of the docket, pleadings submitted, affidavits of counsel, billing statements, and relevant case law provides guidance for determination of fees to be awarded and whether such fees would be subject to a loadstar multiplier analysis. Therefore, plaintiffs' motion to amend judgment and petition for fees and costs is ALLOWED in part and DENIED in part. An analysis of each aspect of the requested relief sought by plaintiffs follows. Attorney Hourly Rate , Time Billing Statements, and Costs: The standard, as forwarded by defendant, identifies "the average rate in the community for similar work by attorneys with the same years" experience." *Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 790 (2007) (citation omitted). I find the hourly rates submitted by plaintiffs, that being \$650.00 per hour for Attorney Schwab, \$500.00 for Attorney Casavant, and \$125.00 for paralegal work at the firm to be within the range of acceptable fees for like work by attorneys with similar experience and therefore, adopt the rates identified as part of the analysis of the billing statements submitted. A careful review of the hourly billing statements identified areas of dispute as to, among other things, fees requested for the Arestani claim, expert analytical fees, and mediation/ settlement undertakings, which the Court agrees, in part, with defendants. Therefore, the hours generated by; Attorney Schwab (84.9) are reduced to 52.6 for calculation purposes; Attorney Casavant (297.3) are reduced to 250.4 for calculation purposes; and for paralegal services (25.5) are reduced to 19.6 for calculation purposes . Likewise, costs claimed in the amount of \$17,181.98 are reduced to \$7,631.98. Loadstar Analysis: Considering the identified work as that "which is the fair market time reasonably spent preparing and litigating a case." *Fontaine v. Ebtec. Corp.*, 415 Mass. 309, 326 (1993), the analysis turns to the total fees sought via loadstar . Here, I find an enhancement appropriate, the question then is, to what extent, should the Court award. Based upon the factors identified (see Fn. 6), I follow the precedent identified in cases cited by plaintiffs where multipliers ranging up to "four are frequently awarded in common fund cases where the loadstar method is applied," *In re Prudential Ins. Co. of American Sales Prac. Litig.*, 148 F.3d 283, 341 (3d Cir. 1998) see also *In re Linerboard Antitrust Litig.*, 2004 WL 121350, at *16 (E.D. Pa. June 2, 2004) identifying a average multiplier of 4.35. Plaintiff seeks a multiplier of 5. Regardless of the complexity and nuances related to defendant's compensation methods the plaintiffs' judgment was agreed to after dispositive motions were decided unlike those identified by plaintiffs in their brief. I therefore award a 4.5 times multiplier to the fees generated and identified above as fair and reasonable compensation. Conclusion: In consideration of the analysis provided herein the motion to amend judgment is ALLOWED so as to include fees in the following manner: * Attorney Hillary Schwab. 52.6 hours @ \$650.00 = \$34,190.00 * Attorney Brant Casavant. 250.4 hours @ \$500.00 = \$125,200.00 * Paralegal. 19.6 hours @ \$125.00 = \$2,450.00 * Costs. = \$7,631.98 The loadstar multiplier of four to the total fees awarded, in the amount of \$161,840, equates to \$647,360.00 plus costs in the amount of \$7,631.98 for an award of \$654,991.98. SO ORDERED: Dated: May 10. 2022

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

MATTHEW SUTTON, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

JORDAN'S FURNITURE, INC.,

Defendant.

Civil Action No. 19-01763

AMENDED JUDGMENT

Pursuant to Mass. R. Civ. P. 58(a) and 59(e), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment, and the Court's May 10, 2022, ruling on Plaintiff's Motion to Amend Judgment and Petition for Fees and Costs, the judgment entered in this action on November 1, 2021, is hereby amended and final judgment is entered as follows:

1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of:

- (a) \$2,696,992.16, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1;
- (b) \$5,393,984.32, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B and payable to each class member in the amounts as set forth in Exhibit 1;

- (c) prejudgment interest in the total amount of \$767,866.92, payable to each class member in the amounts as set forth in Exhibit 1;
- (d) attorneys' fees in the total amount of \$647,360.00; and
- (e) costs in the total amount of \$7,631.98.

2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.

Dated: _____

5/13/22

By: _____

(Sarrat, J)
Justice of the Superior Court

Attest: *[Signature]*
Asst Clerk

<u>Class Member</u> <u>Number</u>	<u>Single Damages</u>	<u>Treble Damages</u>	<u>Interest on Single Damages</u> <u>(calculated by day)</u>	<u>TOTAL DAMAGES</u> <u>(Treble Damages +</u> <u>Interest)</u>	6/19/19 COMPLAINT FILED
					11/1/21 DATE OF JUDGMENT
					866 NUMBER OF DAYS
1	\$11,264.47	\$ 33,793.41	\$ 3,207.13	\$ 37,000.54	
2	\$5,296.69	\$ 15,890.07	\$ 1,508.03	\$ 17,398.10	
3	\$16,036.77	\$ 48,110.31	\$ 4,565.87	\$ 52,676.18	
4	\$17,122.38	\$ 51,367.14	\$ 4,874.95	\$ 56,242.09	
5	\$17,132.37	\$ 51,397.11	\$ 4,877.80	\$ 56,274.91	
6	\$16,229.88	\$ 48,689.64	\$ 4,620.85	\$ 53,310.49	
7	\$7,086.02	\$ 21,258.06	\$ 2,017.48	\$ 23,275.54	
8	\$15,136.13	\$ 45,408.39	\$ 4,309.44	\$ 49,717.83	
9	\$1,587.90	\$ 4,763.70	\$ 452.09	\$ 5,215.79	
10	\$17,426.81	\$ 52,280.43	\$ 4,961.63	\$ 57,242.06	
11	\$16,347.02	\$ 49,041.06	\$ 4,654.20	\$ 53,695.26	
12	\$14,892.05	\$ 44,676.15	\$ 4,239.95	\$ 48,916.10	
13	\$16,524.60	\$ 49,573.80	\$ 4,704.76	\$ 54,278.56	
14	\$13,895.78	\$ 41,687.34	\$ 3,956.30	\$ 45,643.64	
15	\$16,879.49	\$ 50,638.47	\$ 4,805.80	\$ 55,444.27	
16	\$9,884.97	\$ 29,654.91	\$ 2,814.37	\$ 32,469.28	
17	\$17,661.02	\$ 52,983.06	\$ 5,028.31	\$ 58,011.37	
18	\$16,085.17	\$ 48,255.51	\$ 4,579.65	\$ 52,835.16	
19	\$15,904.84	\$ 47,714.52	\$ 4,528.30	\$ 52,242.82	
20	\$15,464.18	\$ 46,392.54	\$ 4,402.84	\$ 50,795.38	
21	\$3,241.85	\$ 9,725.55	\$ 922.99	\$ 10,648.54	
22	\$17,008.99	\$ 51,026.97	\$ 4,842.67	\$ 55,869.64	
23	\$15,247.05	\$ 45,741.15	\$ 4,341.02	\$ 50,082.17	
24	\$17,110.98	\$ 51,332.94	\$ 4,871.71	\$ 56,204.65	
25	\$3,523.34	\$ 10,570.02	\$ 1,003.14	\$ 11,573.16	
26	\$14,016.70	\$ 42,050.10	\$ 3,990.73	\$ 46,040.83	
27	\$3,502.09	\$ 10,506.27	\$ 997.09	\$ 11,503.36	
28	\$9,202.28	\$ 27,606.84	\$ 2,620.00	\$ 30,226.84	
29	\$17,369.55	\$ 52,108.65	\$ 4,945.33	\$ 57,053.98	
30	\$9,191.66	\$ 27,574.98	\$ 2,616.98	\$ 30,191.96	
31	\$13,228.05	\$ 39,684.15	\$ 3,766.19	\$ 43,450.34	
32	\$14,809.80	\$ 44,429.40	\$ 4,216.53	\$ 48,645.93	
33	\$13,964.39	\$ 41,893.17	\$ 3,975.83	\$ 45,869.00	
34	\$13,436.23	\$ 40,308.69	\$ 3,825.46	\$ 44,134.15	
35	\$15,542.12	\$ 46,626.36	\$ 4,425.03	\$ 51,051.39	
36	\$14,754.05	\$ 44,262.15	\$ 4,200.66	\$ 48,462.81	
37	\$19,593.34	\$ 58,780.02	\$ 5,578.47	\$ 64,358.49	
38	\$14,820.36	\$ 44,461.08	\$ 4,219.54	\$ 48,680.62	
39	\$19,086.89	\$ 57,260.67	\$ 5,434.27	\$ 62,694.94	
40	\$13,255.49	\$ 39,766.47	\$ 3,774.00	\$ 43,540.47	
41	\$13,968.02	\$ 41,904.06	\$ 3,976.87	\$ 45,880.93	
42	\$14,348.04	\$ 43,044.12	\$ 4,085.06	\$ 47,129.18	
43	\$9,795.47	\$ 29,386.41	\$ 2,788.89	\$ 32,175.30	
44	\$3,722.40	\$ 11,167.20	\$ 1,059.81	\$ 12,227.01	
45	\$18,416.88	\$ 55,250.64	\$ 5,243.51	\$ 60,494.15	
46	\$1,518.75	\$ 4,556.25	\$ 432.41	\$ 4,988.66	
47	\$9,396.86	\$ 28,190.58	\$ 2,675.40	\$ 30,865.98	
48	\$14,808.90	\$ 44,426.70	\$ 4,216.28	\$ 48,642.98	
49	\$9,205.71	\$ 27,617.13	\$ 2,620.98	\$ 30,238.11	
50	\$3,663.34	\$ 10,990.02	\$ 1,043.00	\$ 12,033.02	
51	\$715.63	\$ 2,146.89	\$ 203.75	\$ 2,350.64	
52	\$10,794.15	\$ 32,382.45	\$ 3,073.23	\$ 35,455.68	
53	\$14,563.47	\$ 43,690.41	\$ 4,146.40	\$ 47,836.81	
54	\$24,720.65	\$ 74,161.95	\$ 7,038.27	\$ 81,200.22	

55	\$1,998.09	\$	5,994.27	\$	568.88	\$	6,563.15
56	\$18,006.91	\$	54,020.73	\$	5,126.79	\$	59,147.52
57	\$18,659.57	\$	55,978.71	\$	5,312.61	\$	61,291.32
58	\$1,291.24	\$	3,873.72	\$	367.63	\$	4,241.35
59	\$16,168.49	\$	48,505.47	\$	4,603.37	\$	53,108.84
60	\$18,712.76	\$	56,138.28	\$	5,327.75	\$	61,466.03
61	\$14,799.61	\$	44,398.83	\$	4,213.63	\$	48,612.46
62	\$363.38	\$	1,090.14	\$	103.46	\$	1,193.60
63	\$17,026.98	\$	51,080.94	\$	4,847.79	\$	55,928.73
64	\$10,320.09	\$	30,960.27	\$	2,938.26	\$	33,898.53
65	\$16,083.25	\$	48,249.75	\$	4,579.10	\$	52,828.85
66	\$14,950.07	\$	44,850.21	\$	4,256.47	\$	49,106.68
67	\$13,255.76	\$	39,767.28	\$	3,774.08	\$	43,541.36
68	\$17,709.58	\$	53,128.74	\$	5,042.14	\$	58,170.88
69	\$16,003.82	\$	48,011.46	\$	4,556.48	\$	52,567.94
70	\$9,431.09	\$	28,293.27	\$	2,685.15	\$	30,978.42
71	\$14,066.35	\$	42,199.05	\$	4,004.86	\$	46,203.91
72	\$1,581.38	\$	4,744.14	\$	450.24	\$	5,194.38
73	\$14,829.63	\$	44,488.89	\$	4,222.18	\$	48,711.07
74	\$15,480.62	\$	46,441.86	\$	4,407.52	\$	50,849.38
75	\$15,006.55	\$	45,019.65	\$	4,272.55	\$	49,292.20
76	\$15,997.09	\$	47,991.27	\$	4,554.57	\$	52,545.84
77	\$10,747.52	\$	32,242.56	\$	3,059.95	\$	35,302.51
78	\$9,392.42	\$	28,177.26	\$	2,674.14	\$	30,851.40
79	\$13,070.63	\$	39,211.89	\$	3,721.37	\$	42,933.26
80	\$15,197.59	\$	45,592.77	\$	4,326.94	\$	49,919.71
81	\$15,447.45	\$	46,342.35	\$	4,398.08	\$	50,740.43
82	\$13,730.50	\$	41,191.50	\$	3,909.24	\$	45,100.74
83	\$16,958.12	\$	50,874.36	\$	4,828.19	\$	55,702.55
84	\$17,271.83	\$	51,815.49	\$	4,917.50	\$	56,732.99
85	\$14,203.45	\$	42,610.35	\$	4,043.90	\$	46,654.25
86	\$5,308.79	\$	15,926.37	\$	1,511.48	\$	17,437.85
87	\$18,018.95	\$	54,056.85	\$	5,130.22	\$	59,187.07
88	\$462.30	\$	1,386.90	\$	131.62	\$	1,518.52
89	\$15,539.63	\$	46,618.89	\$	4,424.32	\$	51,043.21
90	\$16,766.27	\$	50,298.81	\$	4,773.56	\$	55,072.37
91	\$4,050.60	\$	12,151.80	\$	1,153.26	\$	13,305.06
92	\$14,678.79	\$	44,036.37	\$	4,179.23	\$	48,215.60
93	\$15,816.62	\$	47,449.86	\$	4,503.19	\$	51,953.05
94	\$4,387.86	\$	13,163.58	\$	1,249.28	\$	14,412.86
95	\$16,820.87	\$	50,462.61	\$	4,789.11	\$	55,251.72
96	\$16,094.49	\$	48,283.47	\$	4,582.30	\$	52,865.77
97	\$10,992.10	\$	32,976.30	\$	3,129.59	\$	36,105.89
98	\$17,759.80	\$	53,279.40	\$	5,056.43	\$	58,335.83
99	\$15,763.97	\$	47,291.91	\$	4,488.20	\$	51,780.11
100	\$17,559.00	\$	52,677.00	\$	4,999.26	\$	57,676.26
101	\$18,045.71	\$	54,137.13	\$	5,137.84	\$	59,274.97
102	\$16,686.47	\$	50,059.41	\$	4,750.84	\$	54,810.25
103	\$17,352.54	\$	52,057.62	\$	4,940.48	\$	56,998.10
104	\$17,409.41	\$	52,228.23	\$	4,956.67	\$	57,184.90
105	\$15,771.39	\$	47,314.17	\$	4,490.31	\$	51,804.48
106	\$15,961.83	\$	47,885.49	\$	4,544.53	\$	52,430.02
107	\$15,510.32	\$	46,530.96	\$	4,415.98	\$	50,946.94
108	\$17,084.41	\$	51,253.23	\$	4,864.14	\$	56,117.37
109	\$14,308.36	\$	42,925.08	\$	4,073.77	\$	46,998.85
110	\$7,894.09	\$	23,682.27	\$	2,247.54	\$	25,929.81

111	\$16,049.76	\$	48,149.28	\$	4,569.56	\$	52,718.84
112	\$9,297.14	\$	27,891.42	\$	2,647.01	\$	30,538.43
113	\$8,465.20	\$	25,395.60	\$	2,410.15	\$	27,805.75
114	\$14,534.99	\$	43,604.97	\$	4,138.29	\$	47,743.26
115	\$15,470.00	\$	46,410.00	\$	4,404.50	\$	50,814.50
116	\$17,979.36	\$	53,938.08	\$	5,118.95	\$	59,057.03
117	\$3,814.27	\$	11,442.81	\$	1,085.97	\$	12,528.78
118	\$9,488.96	\$	28,466.88	\$	2,701.62	\$	31,168.50
119	\$14,078.10	\$	42,234.30	\$	4,008.21	\$	46,242.51
120	\$4,622.39	\$	13,867.17	\$	1,316.05	\$	15,183.22
121	\$391.35	\$	1,174.05	\$	111.42	\$	1,285.47
122	\$13,587.62	\$	40,762.86	\$	3,868.56	\$	44,631.42
123	\$12,250.91	\$	36,752.73	\$	3,487.99	\$	40,240.72
124	\$11,914.60	\$	35,743.80	\$	3,392.23	\$	39,136.03
125	\$16,474.01	\$	49,422.03	\$	4,690.35	\$	54,112.38
126	\$16,548.60	\$	49,645.80	\$	4,711.59	\$	54,357.39
127	\$17,815.10	\$	53,445.30	\$	5,072.18	\$	58,517.48
128	\$15,681.79	\$	47,045.37	\$	4,464.80	\$	51,510.17
129	\$14,683.15	\$	44,049.45	\$	4,180.47	\$	48,229.92
130	\$13,618.76	\$	40,856.28	\$	3,877.43	\$	44,733.71
131	\$16,202.82	\$	48,608.46	\$	4,613.14	\$	53,221.60
132	\$15,954.35	\$	47,863.05	\$	4,542.40	\$	52,405.45
133	\$781.95	\$	2,345.85	\$	222.63	\$	2,568.48
134	\$8,787.91	\$	26,363.73	\$	2,502.03	\$	28,865.76
135	\$14,927.23	\$	44,781.69	\$	4,249.97	\$	49,031.66
136	\$16,897.40	\$	50,692.20	\$	4,810.90	\$	55,503.10
137	\$11,059.62	\$	33,178.86	\$	3,148.81	\$	36,327.67
138	\$1,629.08	\$	4,887.24	\$	463.82	\$	5,351.06
139	\$1,206.24	\$	3,618.72	\$	343.43	\$	3,962.15
140	\$1,422.80	\$	4,268.40	\$	405.09	\$	4,673.49
141	\$1,425.66	\$	4,276.98	\$	405.90	\$	4,682.88
142	\$1,799.30	\$	5,397.90	\$	512.28	\$	5,910.18
143	\$939.28	\$	2,817.84	\$	267.42	\$	3,085.26
144	\$809.60	\$	2,428.80	\$	230.50	\$	2,659.30
145	\$746.58	\$	2,239.74	\$	212.56	\$	2,452.30
146	\$546.66	\$	1,639.98	\$	155.64	\$	1,795.62
147	\$601.26	\$	1,803.78	\$	171.19	\$	1,974.97
148	\$596.56	\$	1,789.68	\$	169.85	\$	1,959.53
149	\$9,920.09	\$	29,760.27	\$	2,824.37	\$	32,584.64
150	\$16,524.94	\$	49,574.82	\$	4,704.85	\$	54,279.67
151	\$9,494.40	\$	28,483.20	\$	2,703.17	\$	31,186.37
152	\$15,943.61	\$	47,830.83	\$	4,539.34	\$	52,370.17
153	\$5,885.72	\$	17,657.16	\$	1,675.74	\$	19,332.90
154	\$15,200.25	\$	45,600.75	\$	4,327.70	\$	49,928.45
155	\$16,077.41	\$	48,232.23	\$	4,577.44	\$	52,809.67
156	\$6,986.24	\$	20,958.72	\$	1,989.07	\$	22,947.79
157	\$15,562.56	\$	46,687.68	\$	4,430.85	\$	51,118.53
158	\$17,126.87	\$	51,380.61	\$	4,876.23	\$	56,256.84
159	\$14,379.77	\$	43,139.31	\$	4,094.10	\$	47,233.41
160	\$15,082.28	\$	45,246.84	\$	4,294.11	\$	49,540.95
161	\$598.92	\$	1,796.76	\$	170.52	\$	1,967.28
162	\$9,987.80	\$	29,963.40	\$	2,843.65	\$	32,807.05
163	\$8,140.23	\$	24,420.69	\$	2,317.62	\$	26,738.31
164	\$14,052.05	\$	42,156.15	\$	4,000.79	\$	46,156.94
165	\$16,389.35	\$	49,168.05	\$	4,666.25	\$	53,834.30
166	\$17,527.04	\$	52,581.12	\$	4,990.16	\$	57,571.28

167	\$1,015.05	\$	3,045.15	\$	289.00	\$	3,334.15
168	\$11,537.22	\$	34,611.66	\$	3,284.79	\$	37,896.45
169	\$10,735.25	\$	32,205.75	\$	3,056.46	\$	35,262.21
170	\$242.55	\$	727.65	\$	69.06	\$	796.71
171	\$16,345.04	\$	49,035.12	\$	4,653.63	\$	53,688.75
172	\$17,453.03	\$	52,359.09	\$	4,969.09	\$	57,328.18
173	\$19,287.02	\$	57,861.06	\$	5,491.25	\$	63,352.31
174	\$7,869.12	\$	23,607.36	\$	2,240.44	\$	25,847.80
175	\$13,898.23	\$	41,694.69	\$	3,957.00	\$	45,651.69
176	\$10,336.33	\$	31,008.99	\$	2,942.88	\$	33,951.87
177	\$16,535.72	\$	49,607.16	\$	4,707.92	\$	54,315.08
178	\$15,165.47	\$	45,496.41	\$	4,317.80	\$	49,814.21
179	\$3,605.96	\$	10,817.88	\$	1,026.66	\$	11,844.54
180	\$15,286.54	\$	45,859.62	\$	4,352.27	\$	50,211.89
181	\$18,402.23	\$	55,206.69	\$	5,239.34	\$	60,446.03
182	\$6,512.58	\$	19,537.74	\$	1,854.21	\$	21,391.95
183	\$14,523.49	\$	43,570.47	\$	4,135.02	\$	47,705.49
184	\$1,304.55	\$	3,913.65	\$	371.42	\$	4,285.07
185	\$7,036.58	\$	21,109.74	\$	2,003.40	\$	23,113.14
186	\$15,552.57	\$	46,657.71	\$	4,428.01	\$	51,085.72
187	\$11,999.28	\$	35,997.84	\$	3,416.34	\$	39,414.18
188	\$16,140.59	\$	48,421.77	\$	4,595.42	\$	53,017.19
189	\$17,502.87	\$	52,508.61	\$	4,983.28	\$	57,491.89
190	\$5,668.16	\$	17,004.48	\$	1,613.80	\$	18,618.28
191	\$11,502.90	\$	34,508.70	\$	3,275.02	\$	37,783.72
192	\$501.30	\$	1,503.90	\$	142.73	\$	1,646.63
193	\$9,000.49	\$	27,001.47	\$	2,562.55	\$	29,564.02
194	\$2,758.66	\$	8,275.98	\$	785.42	\$	9,061.40
195	\$16,033.37	\$	48,100.11	\$	4,564.90	\$	52,665.01
196	\$17,453.69	\$	52,361.07	\$	4,969.28	\$	57,330.35
197	\$5,162.37	\$	15,487.11	\$	1,469.79	\$	16,956.90
198	\$16,591.96	\$	49,775.88	\$	4,723.94	\$	54,499.82
199	\$4,200.87	\$	12,602.61	\$	1,196.04	\$	13,798.65
200	\$16,536.17	\$	49,608.51	\$	4,708.05	\$	54,316.56
201	\$17,254.70	\$	51,764.10	\$	4,912.63	\$	56,676.73
202	\$18,905.42	\$	56,716.26	\$	5,382.61	\$	62,098.87
203	\$12,691.06	\$	38,073.18	\$	3,613.30	\$	41,686.48
204	\$16,611.39	\$	49,834.17	\$	4,729.47	\$	54,563.64
205	\$6,364.42	\$	19,093.26	\$	1,812.03	\$	20,905.29
206	\$10,534.63	\$	31,603.89	\$	2,999.34	\$	34,603.23
207	\$471.91	\$	1,415.73	\$	134.36	\$	1,550.09
208	\$324.56	\$	973.68	\$	92.41	\$	1,066.09
209	\$2,834.18	\$	8,502.54	\$	806.93	\$	9,309.47
210	\$9,803.37	\$	29,410.11	\$	2,791.14	\$	32,201.25
211	\$959.72	\$	2,879.16	\$	273.24	\$	3,152.40
212	\$13,395.12	\$	40,185.36	\$	3,813.76	\$	43,999.12
213	\$15,494.59	\$	46,483.77	\$	4,411.50	\$	50,895.27
214	\$4,235.64	\$	12,706.92	\$	1,205.94	\$	13,912.86
215	\$4,345.53	\$	13,036.59	\$	1,237.23	\$	14,273.82
216	\$8,695.46	\$	26,086.38	\$	2,475.70	\$	28,562.08
217	\$9,941.91	\$	29,825.73	\$	2,830.58	\$	32,656.31
218	\$1,411.27	\$	4,233.81	\$	401.81	\$	4,635.62
219	\$2,579.15	\$	7,737.45	\$	734.32	\$	8,471.77
220	\$2,392.55	\$	7,177.65	\$	681.19	\$	7,858.84
221	\$10,594.27	\$	31,782.81	\$	3,016.32	\$	34,799.13
222	\$14,201.38	\$	42,604.14	\$	4,043.31	\$	46,647.45

223	\$11,051.57	\$	33,154.71	\$	3,146.52	\$	36,301.23
224	\$3,862.24	\$	11,586.72	\$	1,099.63	\$	12,686.35
225	\$2,131.68	\$	6,395.04	\$	606.92	\$	7,001.96
226	\$10,928.74	\$	32,786.22	\$	3,111.55	\$	35,897.77
227	\$8,757.18	\$	26,271.54	\$	2,493.28	\$	28,764.82
228	\$9,295.98	\$	27,887.94	\$	2,646.68	\$	30,534.62
229	\$8,789.23	\$	26,367.69	\$	2,502.40	\$	28,870.09
230	\$6,791.21	\$	20,373.63	\$	1,933.54	\$	22,307.17
231	\$3,590.98	\$	10,772.94	\$	1,022.40	\$	11,795.34
232	\$4,637.70	\$	13,913.10	\$	1,320.41	\$	15,233.51
233	\$6,940.72	\$	20,822.16	\$	1,976.11	\$	22,798.27
234	\$3,939.76	\$	11,819.28	\$	1,121.70	\$	12,940.98
235	\$5,636.12	\$	16,908.36	\$	1,604.67	\$	18,513.03
236	\$5,168.36	\$	15,505.08	\$	1,471.50	\$	16,976.58
237	\$2,901.80	\$	8,705.40	\$	826.18	\$	9,531.58
238	\$6,226.70	\$	18,680.10	\$	1,772.82	\$	20,452.92
239	\$2,046.81	\$	6,140.43	\$	582.75	\$	6,723.18
240	\$3,090.54	\$	9,271.62	\$	879.91	\$	10,151.53
241	\$3,658.12	\$	10,974.36	\$	1,041.51	\$	12,015.87
242	\$2,963.79	\$	8,891.37	\$	843.83	\$	9,735.20
243	\$1,719.16	\$	5,157.48	\$	489.47	\$	5,646.95
244	\$1,336.20	\$	4,008.60	\$	380.43	\$	4,389.03
245	\$4,955.03	\$	14,865.09	\$	1,410.76	\$	16,275.85
246	\$3,267.44	\$	9,802.32	\$	930.28	\$	10,732.60
247	\$4,377.36	\$	13,132.08	\$	1,246.29	\$	14,378.37
	\$2,696,992.16	\$	8,090,976.48	\$	767,866.92	\$	8,858,843.40

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

MATTHEW SUTTON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

JORDAN'S FURNITURE, INC.,

Defendant.

Civil Action No. 19-01763

SECOND AMENDED JUDGMENT

Pursuant to Mass. R. Civ. P. 58(a), and in accordance with the Court's September 22, 2021, Memorandum of Decision and Order on Defendant's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment and the Court's May 10, 2022, Order on Plaintiff's Motion to Amend Judgment and Petition for Fees and Costs, final judgment is hereby entered as follows:

1. On Count I and Count II of the Complaint, judgment hereby enters in favor of Plaintiff Matthew Sutton and the class of individuals certified by the Court in its December 21, 2020, Order (collectively, "Plaintiff"), in the amounts of:

- (a) \$2,755,481.94, representing single damages and payable to each class member in the amounts as set forth in Exhibit 1;
- (b) \$5,510,963.88, constituting the trebling of the single damages ((a) above) pursuant to M.G.L. c. 149, § 150, and M.G.L. c. 151, § 1B and payable to each class member in the amounts as set forth in Exhibit 1;

- (c) prejudgment interest in the total amount of \$784,519.68, payable to each class member in the amounts as set forth in Exhibit 1;
- (d) attorneys' fees in the total amount of \$647,360.00; and
- (e) costs in the total amount of \$7,631.98.

2. On Count III of the Complaint, judgment hereby enters in favor of Defendant and against Plaintiff.

Dated: 6-8-22

By: 

Clerk

SARBO, J.

Exhibit 1

<u>Class</u> <u>Member</u> <u>Number</u>	<u>Single Damages</u>	<u>Treble Damages</u>	<u>Interest on Single</u> <u>Damages</u> <u>(calculated by day)</u>	<u>TOTAL DAMAGES</u> <u>(Treble damages +</u> <u>Interest)</u>	6/19/2019 COMPLAINT FILED
1	\$11,264.47	\$ 33,793.41	\$ 3,207.13	\$37,000.54	11/1/2021 DATE OF JUDGMENT
2	\$5,296.69	\$ 15,890.07	\$ 1,508.03	\$17,398.10	866 NUMBER OF DAYS
3	\$16,036.77	\$ 48,110.31	\$ 4,565.87	\$52,676.18	
4	\$17,122.38	\$ 51,367.14	\$ 4,874.95	\$56,242.09	
5	\$17,132.37	\$ 51,397.11	\$ 4,877.80	\$56,274.91	
6	\$16,229.88	\$ 48,689.64	\$ 4,620.85	\$53,310.49	
7	\$7,086.02	\$ 21,258.06	\$ 2,017.48	\$23,275.54	
8	\$15,136.13	\$ 45,408.39	\$ 4,309.44	\$49,717.83	
9	\$1,587.90	\$ 4,763.70	\$ 452.09	\$5,215.79	
10	\$17,426.81	\$ 52,280.43	\$ 4,961.63	\$57,242.06	
11	\$16,347.02	\$ 49,041.06	\$ 4,654.20	\$53,695.26	
12	\$14,892.05	\$ 44,676.15	\$ 4,239.95	\$48,916.10	
13	\$16,524.60	\$ 49,573.80	\$ 4,704.76	\$54,278.56	
14	\$13,895.78	\$ 41,687.34	\$ 3,956.30	\$45,643.64	
15	\$16,879.49	\$ 50,638.47	\$ 4,805.80	\$55,444.27	
16	\$9,884.97	\$ 29,654.91	\$ 2,814.37	\$32,469.28	
17	\$17,661.02	\$ 52,983.06	\$ 5,028.31	\$58,011.37	
18	\$16,085.17	\$ 48,255.51	\$ 4,579.65	\$52,835.16	
19	\$15,904.84	\$ 47,714.52	\$ 4,528.30	\$52,242.82	
20	\$15,464.18	\$ 46,392.54	\$ 4,402.84	\$50,795.38	
21	\$3,241.85	\$ 9,725.55	\$ 922.99	\$10,648.54	
22	\$17,008.99	\$ 51,026.97	\$ 4,842.67	\$55,869.64	
23	\$15,247.05	\$ 45,741.15	\$ 4,341.02	\$50,082.17	
24	\$17,110.98	\$ 51,332.94	\$ 4,871.71	\$56,204.65	
25	\$3,523.34	\$ 10,570.02	\$ 1,003.14	\$11,573.16	
26	\$14,016.70	\$ 42,050.10	\$ 3,990.73	\$46,040.83	
27	\$3,502.09	\$ 10,506.27	\$ 997.09	\$11,503.36	
28	\$9,202.28	\$ 27,606.84	\$ 2,620.00	\$30,226.84	
29	\$17,369.55	\$ 52,108.65	\$ 4,945.33	\$57,053.98	
30	\$9,191.66	\$ 27,574.98	\$ 2,616.98	\$30,191.96	
31	\$13,228.05	\$ 39,684.15	\$ 3,766.19	\$43,450.34	
32	\$14,809.80	\$ 44,429.40	\$ 4,216.53	\$48,645.93	
33	\$13,964.39	\$ 41,893.17	\$ 3,975.83	\$45,869.00	
34	\$13,436.23	\$ 40,308.69	\$ 3,825.46	\$44,134.15	
35	\$15,542.12	\$ 46,626.36	\$ 4,425.03	\$51,051.39	
36	\$14,754.05	\$ 44,262.15	\$ 4,200.66	\$48,462.81	
37	\$19,593.34	\$ 58,780.02	\$ 5,578.47	\$64,358.49	
38	\$14,820.36	\$ 44,461.08	\$ 4,219.54	\$48,680.62	
39	\$19,086.89	\$ 57,260.67	\$ 5,434.27	\$62,694.94	
40	\$13,255.49	\$ 39,766.47	\$ 3,774.00	\$43,540.47	
41	\$13,968.02	\$ 41,904.06	\$ 3,976.87	\$45,880.93	
42	\$14,348.04	\$ 43,044.12	\$ 4,085.06	\$47,129.18	
43	\$9,795.47	\$ 29,386.41	\$ 2,788.89	\$32,175.30	
44	\$3,722.40	\$ 11,167.20	\$ 1,059.81	\$12,227.01	

45	\$18,416.88	\$	55,250.64	\$	5,243.51	\$60,494.15
46	\$1,518.75	\$	4,556.25	\$	432.41	\$4,988.66
47	\$9,396.86	\$	28,190.58	\$	2,675.40	\$30,865.98
48	\$14,808.90	\$	44,426.70	\$	4,216.28	\$48,642.98
49	\$9,205.71	\$	27,617.13	\$	2,620.98	\$30,238.11
50	\$3,663.34	\$	10,990.02	\$	1,043.00	\$12,033.02
51	\$715.63	\$	2,146.89	\$	203.75	\$2,350.64
52	\$10,794.15	\$	32,382.45	\$	3,073.23	\$35,455.68
53	\$14,563.47	\$	43,690.41	\$	4,146.40	\$47,836.81
54	\$24,720.65	\$	74,161.95	\$	7,038.27	\$81,200.22
55	\$1,998.09	\$	5,994.27	\$	568.88	\$6,563.15
56	\$18,006.91	\$	54,020.73	\$	5,126.79	\$59,147.52
57	\$18,659.57	\$	55,978.71	\$	5,312.61	\$61,291.32
58	\$1,291.24	\$	3,873.72	\$	367.63	\$4,241.35
59	\$16,168.49	\$	48,505.47	\$	4,603.37	\$53,108.84
60	\$18,712.76	\$	56,138.28	\$	5,327.75	\$61,466.03
61	\$14,799.61	\$	44,398.83	\$	4,213.63	\$48,612.46
62	\$14,301.86	\$	42,905.58	\$	4,071.92	\$46,977.50
63	\$17,026.98	\$	51,080.94	\$	4,847.79	\$55,928.73
64	\$10,320.09	\$	30,960.27	\$	2,938.26	\$33,898.53
65	\$16,083.25	\$	48,249.75	\$	4,579.10	\$52,828.85
66	\$14,950.07	\$	44,850.21	\$	4,256.47	\$49,106.68
67	\$13,255.76	\$	39,767.28	\$	3,774.08	\$43,541.36
68	\$17,709.58	\$	53,128.74	\$	5,042.14	\$58,170.88
69	\$16,003.82	\$	48,011.46	\$	4,556.48	\$52,567.94
70	\$9,431.09	\$	28,293.27	\$	2,685.15	\$30,978.42
71	\$14,066.35	\$	42,199.05	\$	4,004.86	\$46,203.91
72	\$1,581.38	\$	4,744.14	\$	450.24	\$5,194.38
73	\$14,829.63	\$	44,488.89	\$	4,222.18	\$48,711.07
74	\$15,480.62	\$	46,441.86	\$	4,407.52	\$50,849.38
75	\$15,006.55	\$	45,019.65	\$	4,272.55	\$49,292.20
76	\$15,997.09	\$	47,991.27	\$	4,554.57	\$52,545.84
77	\$10,747.52	\$	32,242.56	\$	3,059.95	\$35,302.51
78	\$9,392.42	\$	28,177.26	\$	2,674.14	\$30,851.40
79	\$13,070.63	\$	39,211.89	\$	3,721.37	\$42,933.26
80	\$15,197.59	\$	45,592.77	\$	4,326.94	\$49,919.71
81	\$15,447.45	\$	46,342.35	\$	4,398.08	\$50,740.43
82	\$13,730.50	\$	41,191.50	\$	3,909.24	\$45,100.74
83	\$16,958.12	\$	50,874.36	\$	4,828.19	\$55,702.55
84	\$17,271.83	\$	51,815.49	\$	4,917.50	\$56,732.99
85	\$14,203.45	\$	42,610.35	\$	4,043.90	\$46,654.25
86	\$5,308.79	\$	15,926.37	\$	1,511.48	\$17,437.85
87	\$18,018.95	\$	54,056.85	\$	5,130.22	\$59,187.07
88	\$16,557.61	\$	49,672.83	\$	4,714.16	\$54,386.99
89	\$15,539.63	\$	46,618.89	\$	4,424.32	\$51,043.21
90	\$16,766.27	\$	50,298.81	\$	4,773.56	\$55,072.37
91	\$4,050.60	\$	12,151.80	\$	1,153.26	\$13,305.06
92	\$14,678.79	\$	44,036.37	\$	4,179.23	\$48,215.60

93	\$15,816.62	\$	47,449.86	\$	4,503.19	\$51,953.05
94	\$4,387.86	\$	13,163.58	\$	1,249.28	\$14,412.86
95	\$16,820.87	\$	50,462.61	\$	4,789.11	\$55,251.72
96	\$16,094.49	\$	48,283.47	\$	4,582.30	\$52,865.77
97	\$10,992.10	\$	32,976.30	\$	3,129.59	\$36,105.89
98	\$17,759.80	\$	53,279.40	\$	5,056.43	\$58,335.83
99	\$15,763.97	\$	47,291.91	\$	4,488.20	\$51,780.11
100	\$17,559.00	\$	52,677.00	\$	4,999.26	\$57,676.26
101	\$18,045.71	\$	54,137.13	\$	5,137.84	\$59,274.97
102	\$16,686.47	\$	50,059.41	\$	4,750.84	\$54,810.25
103	\$17,352.54	\$	52,057.62	\$	4,940.48	\$56,998.10
104	\$17,409.41	\$	52,228.23	\$	4,956.67	\$57,184.90
105	\$15,771.39	\$	47,314.17	\$	4,490.31	\$51,804.48
106	\$15,961.83	\$	47,885.49	\$	4,544.53	\$52,430.02
107	\$15,510.32	\$	46,530.96	\$	4,415.98	\$50,946.94
108	\$17,084.41	\$	51,253.23	\$	4,864.14	\$56,117.37
109	\$14,308.36	\$	42,925.08	\$	4,073.77	\$46,998.85
110	\$7,894.09	\$	23,682.27	\$	2,247.54	\$25,929.81
111	\$16,049.76	\$	48,149.28	\$	4,569.56	\$52,718.84
112	\$9,297.14	\$	27,891.42	\$	2,647.01	\$30,538.43
113	\$8,465.20	\$	25,395.60	\$	2,410.15	\$27,805.75
114	\$14,534.99	\$	43,604.97	\$	4,138.29	\$47,743.26
115	\$15,470.00	\$	46,410.00	\$	4,404.50	\$50,814.50
116	\$17,979.36	\$	53,938.08	\$	5,118.95	\$59,057.03
117	\$3,814.27	\$	11,442.81	\$	1,085.97	\$12,528.78
118	\$9,488.96	\$	28,466.88	\$	2,701.62	\$31,168.50
119	\$14,078.10	\$	42,234.30	\$	4,008.21	\$46,242.51
120	\$4,622.39	\$	13,867.17	\$	1,316.05	\$15,183.22
121	\$14,430.99	\$	43,292.97	\$	4,108.68	\$47,401.65
122	\$13,587.62	\$	40,762.86	\$	3,868.56	\$44,631.42
123	\$12,250.91	\$	36,752.73	\$	3,487.99	\$40,240.72
124	\$11,914.60	\$	35,743.80	\$	3,392.23	\$39,136.03
125	\$16,474.01	\$	49,422.03	\$	4,690.35	\$54,112.38
126	\$16,548.60	\$	49,645.80	\$	4,711.59	\$54,357.39
127	\$17,815.10	\$	53,445.30	\$	5,072.18	\$58,517.48
128	\$15,681.79	\$	47,045.37	\$	4,464.80	\$51,510.17
129	\$14,683.15	\$	44,049.45	\$	4,180.47	\$48,229.92
130	\$13,618.76	\$	40,856.28	\$	3,877.43	\$44,733.71
131	\$16,202.82	\$	48,608.46	\$	4,613.14	\$53,221.60
132	\$15,954.35	\$	47,863.05	\$	4,542.40	\$52,405.45
133	\$781.95	\$	2,345.85	\$	222.63	\$2,568.48
134	\$8,787.91	\$	26,363.73	\$	2,502.03	\$28,865.76
135	\$14,927.23	\$	44,781.69	\$	4,249.97	\$49,031.66
136	\$16,897.40	\$	50,692.20	\$	4,810.90	\$55,503.10
137	\$11,059.62	\$	33,178.86	\$	3,148.81	\$36,327.67
138	\$1,629.08	\$	4,887.24	\$	463.82	\$5,351.06
139	\$1,206.24	\$	3,618.72	\$	343.43	\$3,962.15
140	\$1,422.80	\$	4,268.40	\$	405.09	\$4,673.49

141	\$1,425.66	\$	4,276.98	\$	405.90	\$4,682.88
142	\$1,799.30	\$	5,397.90	\$	512.28	\$5,910.18
143	\$939.28	\$	2,817.84	\$	267.42	\$3,085.26
144	\$809.60	\$	2,428.80	\$	230.50	\$2,659.30
145	\$746.58	\$	2,239.74	\$	212.56	\$2,452.30
146	\$546.66	\$	1,639.98	\$	155.64	\$1,795.62
147	\$601.26	\$	1,803.78	\$	171.19	\$1,974.97
148	\$596.56	\$	1,789.68	\$	169.85	\$1,959.53
149	\$9,920.09	\$	29,760.27	\$	2,824.37	\$32,584.64
150	\$16,524.94	\$	49,574.82	\$	4,704.85	\$54,279.67
151	\$9,494.40	\$	28,483.20	\$	2,703.17	\$31,186.37
152	\$15,943.61	\$	47,830.83	\$	4,539.34	\$52,370.17
153	\$5,885.72	\$	17,657.16	\$	1,675.74	\$19,332.90
154	\$15,200.25	\$	45,600.75	\$	4,327.70	\$49,928.45
155	\$16,077.41	\$	48,232.23	\$	4,577.44	\$52,809.67
156	\$6,986.24	\$	20,958.72	\$	1,989.07	\$22,947.79
157	\$15,562.56	\$	46,687.68	\$	4,430.85	\$51,118.53
158	\$17,126.87	\$	51,380.61	\$	4,876.23	\$56,256.84
159	\$14,379.77	\$	43,139.31	\$	4,094.10	\$47,233.41
160	\$15,082.28	\$	45,246.84	\$	4,294.11	\$49,540.95
161	\$15,015.27	\$	45,045.81	\$	4,275.03	\$49,320.84
162	\$9,987.80	\$	29,963.40	\$	2,843.65	\$32,807.05
163	\$8,140.23	\$	24,420.69	\$	2,317.62	\$26,738.31
164	\$14,052.05	\$	42,156.15	\$	4,000.79	\$46,156.94
165	\$16,389.35	\$	49,168.05	\$	4,666.25	\$53,834.30
166	\$17,527.04	\$	52,581.12	\$	4,990.16	\$57,571.28
167	\$1,015.05	\$	3,045.15	\$	289.00	\$3,334.15
168	\$11,537.22	\$	34,611.66	\$	3,284.79	\$37,896.45
169	\$10,735.25	\$	32,205.75	\$	3,056.46	\$35,262.21
170	\$242.55	\$	727.65	\$	69.06	\$796.71
171	\$16,345.04	\$	49,035.12	\$	4,653.63	\$53,688.75
172	\$17,453.03	\$	52,359.09	\$	4,969.09	\$57,328.18
173	\$19,287.02	\$	57,861.06	\$	5,491.25	\$63,352.31
174	\$7,869.12	\$	23,607.36	\$	2,240.44	\$25,847.80
175	\$13,898.23	\$	41,694.69	\$	3,957.00	\$45,651.69
176	\$10,336.33	\$	31,008.99	\$	2,942.88	\$33,951.87
177	\$16,535.72	\$	49,607.16	\$	4,707.92	\$54,315.08
178	\$15,165.47	\$	45,496.41	\$	4,317.80	\$49,814.21
179	\$3,605.96	\$	10,817.88	\$	1,026.66	\$11,844.54
180	\$15,286.54	\$	45,859.62	\$	4,352.27	\$50,211.89
181	\$18,402.23	\$	55,206.69	\$	5,239.34	\$60,446.03
182	\$6,512.58	\$	19,537.74	\$	1,854.21	\$21,391.95
183	\$14,523.49	\$	43,570.47	\$	4,135.02	\$47,705.49
184	\$1,304.55	\$	3,913.65	\$	371.42	\$4,285.07
185	\$7,036.58	\$	21,109.74	\$	2,003.40	\$23,113.14
186	\$15,552.57	\$	46,657.71	\$	4,428.01	\$51,085.72
187	\$11,999.28	\$	35,997.84	\$	3,416.34	\$39,414.18
188	\$16,140.59	\$	48,421.77	\$	4,595.42	\$53,017.19

189	\$17,502.87	\$	52,508.61	\$	4,983.28	\$57,491.89
190	\$5,668.16	\$	17,004.48	\$	1,613.80	\$18,618.28
191	\$11,502.90	\$	34,508.70	\$	3,275.02	\$37,783.72
192	\$501.30	\$	1,503.90	\$	142.73	\$1,646.63
193	\$9,000.49	\$	27,001.47	\$	2,562.55	\$29,564.02
194	\$2,758.66	\$	8,275.98	\$	785.42	\$9,061.40
195	\$16,033.37	\$	48,100.11	\$	4,564.90	\$52,665.01
196	\$17,453.69	\$	52,361.07	\$	4,969.28	\$57,330.35
197	\$5,162.37	\$	15,487.11	\$	1,469.79	\$16,956.90
198	\$16,591.96	\$	49,775.88	\$	4,723.94	\$54,499.82
199	\$4,200.87	\$	12,602.61	\$	1,196.04	\$13,798.65
200	\$16,536.17	\$	49,608.51	\$	4,708.05	\$54,316.56
201	\$17,254.70	\$	51,764.10	\$	4,912.63	\$56,676.73
202	\$18,905.42	\$	56,716.26	\$	5,382.61	\$62,098.87
203	\$12,691.06	\$	38,073.18	\$	3,613.30	\$41,686.48
204	\$16,611.39	\$	49,834.17	\$	4,729.47	\$54,563.64
205	\$6,364.42	\$	19,093.26	\$	1,812.03	\$20,905.29
206	\$10,534.63	\$	31,603.89	\$	2,999.34	\$34,603.23
207	\$471.91	\$	1,415.73	\$	134.36	\$1,550.09
208	\$324.56	\$	973.68	\$	92.41	\$1,066.09
209	\$2,834.18	\$	8,502.54	\$	806.93	\$9,309.47
210	\$9,803.37	\$	29,410.11	\$	2,791.14	\$32,201.25
211	\$959.72	\$	2,879.16	\$	273.24	\$3,152.40
212	\$13,395.12	\$	40,185.36	\$	3,813.76	\$43,999.12
213	\$15,494.59	\$	46,483.77	\$	4,411.50	\$50,895.27
214	\$4,235.64	\$	12,706.92	\$	1,205.94	\$13,912.86
215	\$4,345.53	\$	13,036.59	\$	1,237.23	\$14,273.82
216	\$8,695.46	\$	26,086.38	\$	2,475.70	\$28,562.08
217	\$9,941.91	\$	29,825.73	\$	2,830.58	\$32,656.31
218	\$1,411.27	\$	4,233.81	\$	401.81	\$4,635.62
219	\$2,579.15	\$	7,737.45	\$	734.32	\$8,471.77
220	\$2,392.55	\$	7,177.65	\$	681.19	\$7,858.84
221	\$10,594.27	\$	31,782.81	\$	3,016.32	\$34,799.13
222	\$14,201.38	\$	42,604.14	\$	4,043.31	\$46,647.45
223	\$11,051.57	\$	33,154.71	\$	3,146.52	\$36,301.23
224	\$3,862.24	\$	11,586.72	\$	1,099.63	\$12,686.35
225	\$2,131.68	\$	6,395.04	\$	606.92	\$7,001.96
226	\$10,928.74	\$	32,786.22	\$	3,111.55	\$35,897.77
227	\$8,757.18	\$	26,271.54	\$	2,493.28	\$28,764.82
228	\$9,295.98	\$	27,887.94	\$	2,646.68	\$30,534.62
229	\$8,789.23	\$	26,367.69	\$	2,502.40	\$28,870.09
230	\$6,791.21	\$	20,373.63	\$	1,933.54	\$22,307.17
231	\$3,590.98	\$	10,772.94	\$	1,022.40	\$11,795.34
232	\$4,637.70	\$	13,913.10	\$	1,320.41	\$15,233.51
233	\$6,940.72	\$	20,822.16	\$	1,976.11	\$22,798.27
234	\$3,939.76	\$	11,819.28	\$	1,121.70	\$12,940.98
235	\$5,636.12	\$	16,908.36	\$	1,604.67	\$18,513.03
236	\$5,168.36	\$	15,505.08	\$	1,471.50	\$16,976.58

237	\$2,901.80	\$	8,705.40	\$	826.18	\$9,531.58
238	\$6,226.70	\$	18,680.10	\$	1,772.82	\$20,452.92
239	\$2,046.81	\$	6,140.43	\$	582.75	\$6,723.18
240	\$3,090.54	\$	9,271.62	\$	879.91	\$10,151.53
241	\$3,658.12	\$	10,974.36	\$	1,041.51	\$12,015.87
242	\$2,963.79	\$	8,891.37	\$	843.83	\$9,735.20
243	\$1,719.16	\$	5,157.48	\$	489.47	\$5,646.95
244	\$1,336.20	\$	4,008.60	\$	380.43	\$4,389.03
245	\$4,955.03	\$	14,865.09	\$	1,410.76	\$16,275.85
246	\$3,267.44	\$	9,802.32	\$	930.28	\$10,732.60
247	\$4,377.36	\$	13,132.08	\$	1,246.29	\$14,378.37
	\$2,755,481.94	\$	8,266,445.82	\$	784,519.68	\$ 9,050,965.50