

COPY

Middlesex, ss.

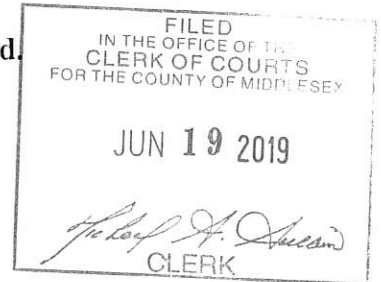
Superior Court Department
of the Trial Court.

MATTHEW SUTTON and AMIE ARESTANI,)
on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
JORDAN'S FURNITURE, INC.,)
)
Defendant.)

Case No.

19-1763

Jury demanded.



CLASS ACTION COMPLAINT

1. Matthew Sutton and Amie Arestani bring this action in order to recover unpaid wages owed to them and all other similarly situated individuals who have worked as sales representatives for Jordan's Furniture, Inc. (hereinafter, "Jordan's").

2. As set forth in more detail below, Jordan's is a Massachusetts corporation that owns and operates a chain of furniture and mattress retail stores in and around Massachusetts. Jordan's employs sales representatives to work at those stores and pays those sales representatives on a commission basis with a recoverable draw. Jordan's also requires its sales representatives to work on Sundays.

3. Although the sales representatives often work more than 40 hours in a week, and routinely work Sundays and holidays, Jordan's does not pay its sales representatives any overtime compensation or other premium pay. In addition, Jordan's has required its sales representatives to work Sundays without paying them 1.5 times their regular hourly rate. As a result of these practices, Jordan's has violated the overtime provision of the Massachusetts

Minimum Fair Wage Law, M.G.L. c. 151, § 1A, as well as the Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150.

The Parties

4. Matthew Sutton is an adult resident of Wareham, Massachusetts. From 2016 to 2019, Sutton worked for Jordan's as a sales representative.

5. Amie Arestani is an adult resident of Lowell, Massachusetts. In 2017 and 2018, Arestani worked for Jordan's as a sales representative.

6. Sutton and Arestani bring this action on behalf of themselves and all others similarly situated, namely, all individuals who have worked for Jordan's as sales representatives during the statutory period applicable to this action, and who have been subject to the practices set forth herein.

7. Jordan's Furniture, Inc., is a domestic corporation organized under the laws of the Commonwealth of Massachusetts. Jordan's maintains its principal offices at 450 Revolutionary Drive in East Taunton, Massachusetts and has numerous locations in and around Massachusetts.

Jurisdiction and Venue

8. The Superior Court has jurisdiction over this action pursuant to M.G.L. c. 212, § 3, because this is a civil action for money damages where there is no reasonable likelihood that the plaintiff will recover an amount less than or equal to \$25,000.

9. Venue is proper in Middlesex County pursuant to M.G.L. c. 223, § 1, because Arestani resides in Lowell, Massachusetts, which is located in Middlesex County. Further, Jordan's maintains a usual place of business in Natick, Massachusetts, which is located in Middlesex County.

Statement of Facts

10. Jordan's is a Massachusetts corporation that owns and operates a chain of furniture and mattress retail stores in and around Massachusetts. Jordan's employs sales representatives to work at those stores.

11. Jordan's pays its sales representatives on a commission basis with a recoverable draw. In other words, Jordan's advances a certain amount of money (the "draw") to its sales representatives each week and then deducts the value of those sales representatives' total draw from any commissions they have earned above the value of the draw.

12. Jordan's does not pay its sales representatives any overtime compensation when they work more than 40 hours in a workweek. Jordan's also does not pay its sales representatives any premium compensation when they work Sundays or holidays.

13. Jordan's requires its sales representatives to work Sundays.

14. Jordan's sales representatives regularly work more than 40 hours in a workweek, and routinely work holidays and Sundays, consistent with its policy that sales representatives are required to work Sundays. However, the sales representatives receive no overtime compensation or premium pay for such work time.

15. Sutton worked for Jordan's as a sales representative at its store in Natick, Massachusetts. Throughout his employment, Jordan's paid Sutton on a commission basis with a recoverable draw, with the exception of training weeks, during which he was paid an hourly rate.

16. Arestani worked for Jordan's as a sales representative at multiple locations, including Jordan's stores in Taunton, Massachusetts, Nashua, New Hampshire, and New Haven, Connecticut. Throughout her employment, Jordan's paid Arestani on a commission basis with a

recoverable draw, with the exception of the training weeks, during which she was paid an hourly rate.

17. Consistent with its compensation policy for sale representatives generally, Jordan's did not provide overtime compensation or premium pay to Sutton or Arestani when they worked more than 40 hours per week. Likewise, Jordan's did not pay Sutton or Arestani any premium pay or additional compensation when they worked Sundays and holidays.

Class Allegations

18. Sutton and Arestani bring this action on behalf of themselves and all others similarly situated pursuant to M.G.L. c. 151, § 1B, M.G.L. c. 149, §§ 148 and 150, and Massachusetts Rule of Civil Procedure 23. They seek to represent all individuals who have worked for Jordan's as sales representatives during the statutory period applicable to this action, and who have been subject to the practices set forth herein.

19. Joinder of the putative class members is impracticable due to the size and composition of the class, the nature of the claims and relief sought, the remedial purpose of the underlying claims, and because individual joinder would be inefficient, uneconomical, and could result in the deprivation of substantive wage rights to aggrieved employees.

20. There are issues of law and fact common to all the proposed class members because Jordan's compensation policy has adversely affected all the proposed class members in similar fashion. The common questions of law and fact predominate over any questions affecting individual class members because the case coheres around a common challenge to a common compensation policy. The predominant questions of law and fact are well-defined and applicable to Sutton, Arestani, and the absent class members.

21. Sutton's and Arestani's claims are typical of the claims of the putative class because all members of the putative class were subject to the same unlawful practices and suffered similar harms, for which they are owed similar relief.

22. Sutton and Arestani will adequately represent the interests of the putative class because they do not have a conflict of interest with the class members. The undersigned counsel will adequately represent the class members' interests because they have substantial experience in this field, and their interests in representing the class do not conflict with those of the proposed class.

23. A class action is superior in this case for several reasons including, but not limited to: the case challenges a common compensation policy; the amounts owed to individual employees may not be substantial enough to justify individual lawsuits; many employees may be reluctant to bring claims individually for fear of retaliation; some class members may not have the resources to bring their claims individually; and it would be an inefficient use of judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

Administrative Filing

24. Sutton and Arestani have filed their statutory claims with the Fair Labor Division of the Massachusetts Attorney General's Office.

Count I – Failure to Pay Overtime M.G.L. c. 151, § 1A

25. The overtime provision of the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, § 1A, requires employers to pay their employees an hourly rate that is not less than 1.5 times their regular rate for all hours worked in excess of 40 per week.

26. The regular rate for employees who are paid on a purely commission basis is the basic minimum wage. Thus, employees who are paid on a purely commission basis are entitled to receive overtime compensation at a rate of 1.5 times the basic minimum wage.

27. As set forth above, Jordan's has failed to pay its sales representatives the proper overtime compensation when they have worked more than 40 hours in a week. Accordingly, Jordan's has violated M.G.L. c. 151, § 1A.

28. Sutton and Arestani bring this action on their own behalf and on behalf of all others similarly situated pursuant to M.G.L. c. 151, § 1B.

Count II – Failure to Pay Sunday and Holiday Pay
M.G.L. c. 149, §§ 148 and 150

29. The Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150, requires employers to pay their employees an hourly rate that is not less than 1.5 times their regular rate when they work on Sundays and certain holidays, as provided for in M.G.L. c. 136, §§ 6(50) and 13, even if they do not work more than 40 hours in a week.

30. The regular rate for employees who are paid on a purely commission basis is the basic minimum wage. Thus, employees who are paid on a purely commission basis are entitled to receive compensation at a rate of 1.5 times the basic minimum wage when they work Sundays and certain holidays.

31. As set forth above, Jordan's has failed to pay its sales representatives the proper additional compensation when they have worked Sundays and holidays. Accordingly, Jordan's has violated the Massachusetts Wage Act.

32. Sutton and Arestani bring this action on their own behalf and on behalf of all others similarly situated pursuant to M.G.L. c. 149, §§ 148 and 150.

Count III - Requiring Work on Sundays
M.G.L. c. 149, §§ 148 and 150

33. Pursuant to M.G.L. c. 136, § 6(50), employers are prohibited from requiring employees to work on Sundays at a rate of less than 1.5 times the employees' regular hourly rate.

34. As set forth above, Jordan's has required its sales representatives to work on Sundays and has not paid them 1.5 times their regular hourly rate. Accordingly, Jordan's has violated the Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150.

35. Sutton and Arestani bring this action on their own behalf and on behalf of all others similarly situated pursuant to M.G.L. c. 149, §§ 148 and 150.

Jury Demand

36. Sutton and Arestani demand a trial by jury.

WHEREFORE, Plaintiffs respectfully request that the Court enter the following relief:

1. Certification of a class of similarly situated individuals pursuant to Massachusetts Rule of Civil Procedure 23;
2. Restitution for all hours worked in excess of 40 per week during the period of the violations described herein;
3. Restitution for all hours worked on Sundays and certain holidays during the period of the violations described herein;
4. Restitution for damages incurred as a result of Jordan's requiring its employees to work on Sundays;
5. Statutory trebling;
6. Interest;
7. Attorneys' fees and costs; and
8. All other relief to which Sutton, Arestani, and the putative class members may be entitled.

Respectfully submitted,

MATTHEW SUTTON and AMIE ARESTANI,
on behalf of themselves
and all others similarly situated,



Hillary Schwab, BBO #666029

Brant Casavant, BBO #672614

FAIR WORK P.C.

192 South Street, Suite 450

Boston, MA 02111

Tel. (617) 607-3261

Fax. (617) 488-2261

hillary@fairworklaw.com

brant@fairworklaw.com

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