

COMMONWEALTH OF MASSACHUSETTS

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. 19-01763

**PLAINTIFF’S REPLY IN FURTHER SUPPORT OF CLASS CERTIFICATION**

This is a simple case that amply satisfies every aspect of Rule 23. Jordan’s Furniture, Inc. (“Jordan’s”) concedes that it pays all of its 258 sales consultants in Massachusetts the same way, pursuant to the same compensation plan. Whether that plan ensured that the sales consultants received “separate and additional compensation” for overtime and Sundays, as required by the Massachusetts overtime statute, M.G.L. c. 151, § 1A, and Wage Act, M.G.L. c. 149, § 148, is the common question at the heart of this case – and one equally applicable to every class member. Contrary to Jordan’s arguments, the fact that some sales consultants may not have been injured as a result of Jordan’s compensation plan does not mean the proposed class is overbroad. Nor is it true that individualized inquiries into the hours or days worked by the sales consultants are necessary to establish class liability. Further, Plaintiff Matthew Sutton is undoubtedly typical and adequate – indeed, more than adequate – to represent the class. Finally, class certification is superior to any other alternative method of fairly and efficiently adjudicating this dispute. Accordingly, Plaintiff respectfully requests that the Court grant his motion for class certification.

## Argument

### 1. The class is not “fatally overbroad.”

Jordan’s argument that the proposed class is overbroad because some sales consultants may not have worked overtime or Sundays fails for two reasons. First, it is settled that the “possible presence of some ‘uninjured class members’ should not defeat certification where there [is] sufficient evidence to infer a prohibited class-wide payment practice.”<sup>1</sup> *Gammella v. P.F. Chang’s China Bistro, Inc.*, 482 Mass. 1, 14 (2019). Second, “plaintiffs bear the burden of providing information sufficient to enable the motion judge to form a reasonable judgment that the class meets the requirements of rule 23; they do not bear the burden of producing evidence sufficient to prove that the requirements have been met.”<sup>2</sup> *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 87 (2001). Here, Jordan’s admits to employing 258 sales consultants in Massachusetts during the relevant period. It is reasonable to infer that the vast majority of those individuals

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<sup>1</sup> See also *Salvas v. Wal-Mart Stores, Inc.*, 452 Mass. 337, 357 (2008) (Rule 23 does not require plaintiffs to “identify every ‘specific’ instance in which a member of the plaintiff class has been ‘injured or harmed by [an employer’s] actions or policies.”); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 25 (1st Cir. 2015) (“cases from our sister circuits and this circuit hold that the presence of a de minimis number of uninjured class members is permissible at class certification.”); *Kohen v. Pacific Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009) (“What is true is that a class will often include persons who have not been injured by the defendant’s conduct; indeed this is almost inevitable because at the outset of the case many of the members of the class may be unknown, or if they are known still the facts bearing on their claims may be unknown.”); *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198 (10th Cir. 2010) (“Rule 23’s certification requirements neither require all class members to suffer harm ... nor Named Plaintiffs to prove class members have suffered such harm. On the contrary, Named Plaintiffs only have a burden to prove that the allegations of their complaint, which at this stage we and the district court must accept as true, satisfy Rule 23(a)’s requirements.”); *Baby Neal and by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (“class members can assert ... a single common complaint even if they have not all suffered actual injury; demonstrating that all class members are *subject* to the same harm will suffice.”) (emphasis original); Newberg on Class Actions § 3.13 (5th ed. 2011) (“possibility that a well-defined class will nonetheless encompass some class members who have suffered no injury” is “generally unproblematic”); McLaughlin on Class Actions § 4:5 (11th ed. 2014) (Rule 23(a)(1) “does not entail an assessment of how many putative class members ultimately will have meritorious claims”).

<sup>2</sup> See also *McCuin v. Secretary of Health & Human Servs.*, 817 F.2d 161, 167 (1st Cir. 1987) (trial courts may draw “reasonable inferences from the facts presented to find the requisite numerosity.”); 1 W.B. Rubenstein, Newberg on Class Actions § 3.13 at 215 (5th ed. 2011) (courts can make “commonsense assumptions regarding the number of putative class members”).

worked at least some overtime or a single Sunday shift. And even if a few did not, that does mean the class is overbroad – it simply means those individuals will not recover damages.<sup>3</sup>

## **2. Joinder of 258 employees is by no measure “practicable.”**

Jordan’s next argues that Plaintiff has not shown how joinder is impracticable. “Impracticability” means “impractical, unwise or imprudent.” *Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 735 (1978). The “most important factor” in determining impracticability is the “absolute size of the proposed class.” *Norell v. Spring Valley Country Club*, 2016 WL 1554716, at \*1 (Mass. Super. Mar. 15, 2016), quoting 5 Moore’s Federal Practice § 23.22[1][b], at 23-54 to 23-55 (3d ed. 2015) (internal quotation marks omitted). Applying this standard, it is absurd for Jordan’s to suggest that it is “[p]ractical, [w]ise or [i]mprudent,” *Brophy*, 6 Mass. App. Ct. at 735, to require 258 individuals living throughout Massachusetts – with some possibly residing in places like Rhode Island or southern New Hampshire – to join this action under Rule 20,<sup>4</sup> compare *Lopes v. City of Brockton*, 2016 WL 10839674, at \*3 (Jul. 11, 2016) (certifying class of 40 individuals; “Although the court infers that the members here are geographically close, assuming they would have lived in or near the city of Brockton ... this factor alone is not sufficient to defeat joinder.”). To do so would plainly

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<sup>3</sup> Even if the Court disagrees, the solution to Jordan’s objection does not require denial of class certification because the class may easily be redefined to include all sales consultants who worked in Massachusetts during the relevant period and who “worked more than 40 hours in any workweek or on any Sunday.” Based on counsel’s preliminary review of Jordan’s payroll records, that modified definition would encompass approximately 253 out of the 258 potential class members (i.e. 98 percent of the proposed class).

<sup>4</sup> Moreover, Jordan’s has refused to produce contact information for any of its sales consultants unless and until a class is certified. Thus, short of class certification, Plaintiff has no way of contacting most of the putative class members in order to inform them of their joinder rights. This is, of course, precisely the outcome Jordan’s desires, as it would mean that its liability would be limited to the handful of individuals whom Plaintiff would be able to contact and who would be willing to join this lawsuit. See *Gammella*, 482 Mass. at 12 (“The combination of thousands of instances of nonpayment to hundreds of employees, the absence of any record keeping justifying the nonpayments, and a *refusal [by defendant] to provide the names of the employees involved* made it reasonable to infer that the number of plaintiffs would satisfy the numerosity requirement.”) (emphasis added).

impose an “undue burden” on Plaintiff, not to mention the Court. *Norell*, 2016 WL 1554716, at \*1 (impracticability requires “establishing that individual joinder of each alleged class member would impose an undue burden on the party seeking to maintain the class action.”), *quoting* J.W. Smith & H.B. Zobel, Rules Practice § 23.4, at 337 (2d ed. 2006).

### **3. Commonality and predominance are satisfied.**

Jordan’s argument on commonality and predominance – which is that the class members’ claims will require individualized inquiries into each of their days and hours worked – is premised on a far more onerous application of those requirements than actually exists at law. Neither commonality nor predominance requires that *every* question of law or fact be “dispositive of the entire class action.” *Fletcher v. Cape Cod Gas Co.*, 394 Mass. 595, 603 (1985), *quoting Mertens v. Abbott Labs.*, 99 F.R.D. 38, 41 (D.N.H. 1983). Rather, commonality requires that the class members’ claims “share a common denominator,” *Holzman v. General Motors Corp.*, 2007 WL 4098913, at \*10 (Mass. Super. 2007), while predominance requires that the class members’ claims merely be “sufficiently cohesive to warrant adjudication by representation,” *Salvas*, 452 Mass. at 364, *quoting In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 70 (D. Mass. 2005) (emphasis original, internal quotation marks omitted). Here, the class members’ claims cohere around an obvious common denominator: Jordan’s compensation plan, which Jordan’s concedes “is the same for all of its sales employees.” (Opp. 7). That plan either ensured that Jordan’s sales consultants received “separate and additional compensation” for overtime and Sundays, or it did not. Either way, the legality of the plan presents a common question of liability, the answer to which will “signal of the beginning of the end” of the litigation.<sup>5</sup> *Fletcher*, 394 Mass. at 603, *quoting Mertens*, 99 F.R.D. at 41.

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<sup>5</sup> For this reason, Jordan’s reliance on *Vitali v. Reit Mgmt. & Research, LLC*, 2016 WL 1425725 (Mass. Super. Mar. 2, 2016), is misplaced. In *Vitali*, the claim was not, as here, that the employer had adopted a per se unlawful

Furthermore, Jordan’s argument on commonality and predominance incorrectly assumes that liability can only be properly established on an individual basis by assessing each class member’s hours worked. Not so. Plaintiff may establish liability on a class basis by (for example) demonstrating that Jordan’s compensation plan does not provide separate and additional pay for overtime and Sundays, and then submitting aggregate data concerning the total number of overtime and Sunday hours worked by all of Jordan’s sales consultants in Massachusetts. *See Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1140 (9th Cir. 2016) (plaintiffs may “demonstrate class-wide liability by offering proof of underpayment in the aggregate” because such “proof is not a matter of probability – it is a matter of logic that an aggregate underpayment means that [defendant] underpaid some, possibly all, subclass members.”). Alternately, Plaintiff may establish liability through evidence that Jordan’s compensation plan applied in equal fashion to every class member, and then submitting representative testimony and sample time and payroll records concerning overtime and Sunday work. *See Salvas*, 452 Mass. at 366 (where “general corporate documents” establish that “all members of the class were unarguably the beneficiaries of identical terms of employment,” the “necessary bridge to liability” may be provided by “the sworn and unsworn statements of Massachusetts hourly employees and managers about missed and shortened breaks and uncompensated work.”). Once that is done, some individualized inquiry may be necessary to determine the class members’ damages, but that does not prevent class certification.<sup>6</sup> Nor will

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compensation policy that deprived workers of overtime or premium pay. *Id.* at \*7. Rather, the claim in *Vitali* was that the employer *deviated* from an admittedly *lawful* compensation policy by permitting the plaintiff to work off-the-clock. *Id.* at \*1-\*2. Thus, there was no common “hook” upon which to hang a common question of liability because the plaintiff was not challenging the legality of a company-wide *policy*, but instead an individualized *practice* that she could not prove occurred with any class-wide regularity.

<sup>6</sup> *See Salvas*, 452 Mass. at 364 (“Class certification may be appropriate where common issues of law and fact are shown to form the nucleus of a liability claim, even though the appropriateness of class action treatment in the damages phase is an open question.”); *Weld*, 434 Mass. at 92 (“Even if, as the defendants contend, an individualized

such an inquiry overwhelm the common issues that “form the nucleus of [the] liability claim,” *Salvas*, 452 Mass. at 364, given that Jordan’s maintains extensive time records for all its sales employees.<sup>7</sup> Simply put, the ministerial task of analyzing the class member’s time records will not overwhelm the common questions upon which Jordan’s liability depends.<sup>8</sup>

#### **4. Plaintiff Matthew Sutton is a model class representative.**

Jordan’s challenges to Sutton’s typicality and adequacy fall considerably wide of the mark. To start, the purpose of typicality is to “ensure[] that the named plaintiff, in ‘pursu[ing] his or her own self-interest, will advance the interests of the class members.” *Weld*, 434 Mass. at 87, quoting 1 H. Newberg, *Class Actions* § 3.13, at 3-76 (3d ed. 1992). It is “not [a] highly demanding” requirement, *Ouadani v. Dynamex Operations East, LLC*, 405 F. Supp. 3d 149, 162 (D. Mass. 2019), and “may be satisfied by an allegation that the defendant acted consistently toward the members of a putative class,” *Fletcher v. Cape Cod Gas Co.*, 394 Mass. 595, 606 (1985). Here, no one could reasonably dispute that Jordan’s “acted consistently” toward its sales

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inquiry is necessary to determine damages ... such a necessity at the damages stage does not preclude class certification where all other requirements are met.”).

<sup>7</sup> See, e.g., Brown Tr. [Ex. 7] at 8:16-9:3; 28:20-24; 57:10-16 (testifying about Jordan’s time and attendance systems); Sales Consultant Compensation Register Report [Ex. 10]; Sample Time Report, attached as “Exhibit 11.”

<sup>8</sup> See, e.g., *Smilow v. Southwestern Bell Mobile Systems, Inc.*, 323 F.3d 32, 40 (1st Cir. 2003) (“Common issues predominate where individual factual determinations can be accomplished using computer records, clerical assistance, and objective criteria – thus rendering unnecessary an evidentiary hearing on each claim.”); *Minns v. Advanced Clinical Employment Staffing LLC*, 2015 WL 3491505, \*8 (N.D. Cal. 2015) (“the necessity of making individualized factual determinations does not defeat class certification if those determinations are susceptible to generalized proof like employment and payroll records.”); *In re Checking Account Overdraft Litig.*, 286 F.R.D. 645, 658 (S.D. Fla. 2012) (“class members are readily ascertainable through objective criteria: [defendant’s] own records of individuals who were assessed overdraft fees. Plaintiffs’ expert will formulate calculations that can identify members of the class by running queries in [defendant’s] computer records. Such calculations will be merely ministerial in nature and will not be plagued by resolution of individual class members’ issues. Damages will be calculated using the same [defendant] records used to identify the class members. These facts make this case eminently manageable as a class action.”); *Wells v. McDonough*, 188 F.R.D. 277, 279 (N.D. Ill. 1999) (“the Court finds that the slightly untidy potential ministerial undertaking described above” – examining defendant’s records and “asking the class members one question” – “is superior to other available methods for the fair and efficient adjudication of this controversy.”).

consultants – among them Sutton – because it paid them all the *exact same way*, including when they worked overtime and Sundays. *Id.* That Sutton may not have worked *as much* overtime, *as many* Sundays, or is otherwise not a carbon copy of every other class member is a distinction without a difference.<sup>9</sup> What matters is that his success in proving that *he* was denied overtime or Sunday pay pursuant to Jordan’s universal compensation plan will advance both his interests and “the interests of the class members.” *Weld*, 434 Mass. at 87.

Jordan’s attacks on Sutton’s adequacy are both suspect<sup>10</sup> and unsupported by reference to any Massachusetts case law. The fact of the matter is that Sutton – a Ph.D. candidate and former U.S. Army Captain<sup>11</sup> – is a model class representative. He responded to written discovery, including 40 requests for admissions, and sat for a deposition where he answered questions about his personal background, education, job history, and experience working for Jordan’s. At that

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<sup>9</sup> See also *Ouadani*, 405 F. Supp. 3d at 163 (“Ouadani has provided evidence from Dynamex of its policies and practices as they applied to all [putative class members], and he has provided his own testimony of how those policies and practices were in fact applied to him. This is sufficient for purposes of Rule 23(a)(3) [typicality].”); *Kamar v. RadioShack Corp.*, 375 Fed. Appx. 734 (9th Cir. 2010) (finding typicality despite “variations in meetings attended, scheduled shifts, and actual hours of work” because named plaintiffs and class members were all injured by the same general meeting compensation policy); Newberg on Class Action § 3.38 (5th ed.) (“In employment cases, the proposed class representatives’ claims are generally held to be typical of the class members’ claims if the representatives hold positions somewhat similar to those of the class members, even if the class representatives do not hold every job position in the class, were not injured as severely as every member of the class, or were not subject to the exact same injurious employment practices as every member of the class.”) (collecting cases).

<sup>10</sup> See *Abelson v. Strong*, 1987 WL 15872, at \*6 (D. Mass. 1987) (“A court ... must be suspicious of defendants’ efforts to protect unnamed plaintiffs when that protection will, as a practical matter, leave them without a remedy”); *Kline v. Wolf*, 702 F.2d 400, 402 (2d Cir. 1983) (courts must be “wary of a defendant’s efforts to defeat representation of a class on grounds of inadequacy”); *Eggleston v. Chicago Journeymen Plumbers’ Local Union No. 130, U.A.*, 657 F.2d 890, 895 (7th Cir. 1981) (“it is often the defendant, preferring not to be successfully sued by anyone, who supposedly undertakes to assist the court in determining whether a putative class should be certified. When it comes, for instance, to determining whether ‘the representative parties will fairly and adequately protect the interests of the class,’ ... it is a bit like permitting a fox, although with pious countenance, to take charge of the chicken house.”); *In re Wellbrutin Sr Direct Purchaser Antitrust Litig.*, 2008 WL 1946848, at \*5 n.14 (E.D. Pa. 2008) (“Courts maintain this skepticism because a defendant makes the ‘conflicts’ argument in the guise of ensuring adequate representation for the class, where in reality, the defendant seeks to avoid class certification altogether”); *In re Bulk (Extruded) Graphite Prods. Antitrust Litig.*, 2006 WL 891362, at \*8 (D.N.J. 2006) (“courts are generally skeptical of defenses to class certification based on conflicts between the proposed class members”).

<sup>11</sup> Deposition of Matthew Sutton (“Sutton Tr.”) at 14:20-15:4, attached as “Exhibit 12.”

deposition, he correctly testified about the nature of the class claims,<sup>12</sup> described the scope of the class<sup>13</sup> as well as the purpose of class litigation,<sup>14</sup> and attested to his personal knowledge about Jordan's unlawful pay practices.<sup>15</sup> Sutton also testified that he understands he will have a fiduciary responsibility to the class if it is certified, that he will have to make decisions on behalf of the class, and that he has not been promised anything in order to serve as a class representative.<sup>16</sup> No court in Massachusetts – and few courts elsewhere<sup>17</sup> – has ever required anything more to establish adequacy. Sutton is, without a doubt, adequate.

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<sup>12</sup> Sutton Tr. [Ex. 12] at 82:2-10 (“Q. And do you have an understanding of what the claims are in the complaint? A. Yes. Q. And what is that? A. Well, essentially, Jordan’s should have paid employees time and a half on Sunday and an hourly rate for that day. They should have paid for overtime hours, and they didn’t.”)

<sup>13</sup> Sutton Tr. [Ex. 12] at 82:23-83:6 (“Q. And is it your understanding that the class would include employees who work at stores other than Natick? A. It is my understanding. Q. And what other stores do you believe the class would be comprised of? A. Probably all of the stores in the Jordan’s chain.”).

<sup>14</sup> Sutton Tr. [Ex. 12] at 83:10-24 (“Q. Do you have an understanding of the class action process? A. Yes. Q. And what is that based upon? A. Just, I suppose, common knowledge. Q. And what is that understanding? A. Is that it’s impractical for an entire class of individuals – if it’s a large group that’s suffered some sort of wrongdoing, it’s impossible for all of those people to come together and bring a complaint against a company. So a couple of individuals are then determined to be the kind of named plaintiffs in the case, and those are the names that are on the paperwork, and those are the ones that go through depositions such as this.”).

<sup>15</sup> Sutton Tr. [Ex. 12] at 84:24-85:9 (“Q. So putting aside any communications that you had with Brant or Hillary, your attorneys in the case, you just made the statement that Jordan’s didn’t follow the law. What is that based on? A. Well, it’s based on the law in Massachusetts regarding the requirement for employees such as me to be paid on Sundays is a pretty black-and-white thing. And from personal experience, I know that I wasn’t paid an hourly wage on Sundays.”).

<sup>16</sup> Sutton Tr. [Ex. 12] at 90:10-21 (“10 Q. Do you understand that if the Court does appoint you as a class rep, that you’ll have a fiduciary responsibility to other people in the class? A. I do understand that. Q. And that you’ll have to make decisions on behalf of all of the class? A. I understand that. Q. Do you have any sort of special relationship or arrangement for compensation to serve as a class representative? A. No.”).

<sup>17</sup> *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 61 (2d Cir. 2000) (“the district court unfortunately seized on a myopic view of the knowledge requirement and concluded that Brett did not have a basic understanding of the litigation and therefore could not be an adequate class representative. We are not convinced that such a harsh application of the rules is appropriate, especially in the circumstances of this case.”) (internal citations omitted); *In re Organogenesis Sec. Litig.*, 241 F.R.D. 397, 408 (D. Mass. 2007) (“The law does not require Lead Plaintiffs to have specific knowledge of the technical aspects of the case, but rather to understand their duties and intend to carry them out. One court has struck a Lead Plaintiff for extreme lack of knowledge about the case where he could not even name the Defendant. This case does not rise to that level. Defendants ask this court to second-guess Lead Plaintiffs’ decisions and test their knowledge of the case beyond the level that is required of a class representative.”); *In re Transkaryotic Therapies, Inc., Sec. Litig.*, 2005 WL 3178162, at \*2 (D. Mass. 2005) (class representatives adequate despite deficiencies in knowledge about the case; “named plaintiffs are not required to have expert

**5. A class action is superior to allowing Jordan's to evade liability.**

A class action must be superior to “other available methods for the for the fair and efficient adjudication of the controversy.” Mass. R. Civ. P. 23(b). The only available method for adjudicating this controversy besides class treatment is to limit recovery to those sales associates are willing and able to join this lawsuit or file their own. For obvious reasons, Jordan's would prefer that outcome. Jordan's preferences aside, however, it is neither fair nor efficient to require more than 250 individuals – 75 percent of whom are currently employed by Jordan's (Opp. 5, n. 4) – to bring their own legal actions challenging a compensation plan that Jordan's concedes is the same for all sales consultants. *Philadelphia Elec. Co. v. Anaconda Am. Brass Co.*, 43 F.R.D. 452, 463 (E.D. Pa. 1968) (“I see no necessity for encumbering the judicial process with 25 lawsuits, if one will do”). This is especially true given that the overtime statute and Wage Act embody a “legislative preference for class treatment,” *Goldberg v. EF Education First, Inc.*, 2017 WL 4400028, at \*9 (Mass. Super. 2017), as a means of advancing several “very legitimate policy rationales,”<sup>18</sup> *Machado v. System4 LLC*, 465 Mass. 508, 515 (2013). Lastly, the lack of an opt-out mechanism in Massachusetts' version of Rule 23 does not implicate any due process

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knowledge of all details of the case”); *Adair v. Sorenson*, 134 F.R.D. 13, 18-19 (D. Mass. 1991) (“The plaintiff's deposition demonstrates that his personal knowledge of many of the facts pleaded in the complaint is limited. However, a representative need not have personal knowledge of all the relevant facts to be an adequate representative.”); *Noble v. 93 Univ. Place Corp.*, 224 F.R.D. 330, 344 (S.D.N.Y. 2004) (“There is some question as to whether [plaintiff] is familiar with the action and has the ability to ‘ensure vigorous prosecution of the litigation’ by ‘at least minimally supervis[ing] class counsel. But these concerns do not require a finding of inadequacy. First, although he has difficulty reading and speaking English, Nunez has exhibited a basic understanding of the instant action, i.e., that it involves overtime pay. Moreover, Nunez has prior experience testifying in court, which shows some familiarity with the legal system.”); *In re Nature's Sunshine Product's Inc. Sec. Litig.*, 251 F.R.D. 656, 658-59 (D. Utah 2008) (class representative adequate because his “deposition [made] clear that he understands his duties as a class representative and he understands the underlying allegations”).

<sup>18</sup> These include the “deterrent effect of class action lawsuits and, unique to the employment context, the desire to allow one or more courageous employees the ability to bring claims on behalf of other employees who are too intimidated by the threat of retaliation and termination to exercise their rights under the Wage Act.” *Machado*, 465 Mass. at 515 n.12.

concerns. *Eldridge v. Provident Cos., Inc.*, 2000 WL 289640, at \*3 (Mass. Super. Mar. 6, 2000) (“we are not constitutionally compelled to reject certification merely because of the absence of an ‘opt-out’ provision in Mass. R. Civ. P. 23(b). Other due process devices, such as notice and the opportunity to be heard, may suffice.”). Superiority is satisfied.

### **Conclusion**

Jordan’s has not shown that this case is unfit for class treatment. Plaintiff therefore respectfully requests that the Court certify the following class: all individuals whom Jordan’s Furniture, Inc. has employed in the position 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 July 31, 2019.

Respectfully submitted,

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

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**Dated:** July 23, 2020.

**CERTIFICATE OF SERVICE**

I certify that, on July 23, 2020, one copy of this motion was served by email on counsel for Defendant at the following addresses:

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/s/ Brant Casavant  
Brant Casavant

# **Exhibit 11**

JORDAN'S FURNITURE INC (6121597)  
 450 REVOLUTIONARY DRIVE  
 EAST TAUNTON, MA 02718  
 United States

**Detailed Calculated Time (Time Entries)**  
**Detailed Calculated Time -MA Sales**

Time Entry Dates: 01/01/2018-02/25/2018

Employee Id: 01161 First Name: [REDACTED] Last Name: [REDACTED]

Week Start Date: 01/01/2018 Week End Date: 01/07/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/01/2018	?	?	-		Hol day	103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/01/2018	Mon 11:45a	Mon 06:00p	6:15			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/02/2018	Tue 09:44a	Tue 09:00p	11:16			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/03/2018	Wed 09:44a	Wed 12:14p	2:30			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/03/2018	Wed 12:58p	Wed 09:02p	8:04			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/06/2018	Sat 11:49a	Sat 10:01p	10:12			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/07/2018	Sun 10:44a	Sun 06:01p	7:17			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 01/01/2018 Week End Date: 01/07/2018 )</b>				45:34				

Week Start Date: 01/08/2018 Week End Date: 01/14/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/13/2018	?	?	7:00		Hol day No Pay	103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/09/2018	Tue 09:45a	Tue 09:00p	11:15			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/10/2018	Wed 08:53a	Wed 09:01p	12:08			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/13/2018	Sat 10:54a	Sat 04:41p	5:47			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/14/2018	Sun 10:35a	Sun 05:30p	6:55			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 01/08/2018 Week End Date: 01/14/2018 )</b>				43:05				

Week Start Date: 01/15/2018 Week End Date: 01/21/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/16/2018	Tue 09:45a	Tue 09:00p	11:15			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/17/2018	Wed 09:12a	Wed 09:00p	11:48			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/20/2018	Sat 10:53a	Sat 09:00p	10:07			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/21/2018	Sun 10:43a	Sun 06:05p	7:22			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 01/15/2018 Week End Date: 01/21/2018 )</b>				40:32				

Week Start Date: 01/22/2018 Week End Date: 01/28/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/23/2018	Tue 09:44a	Tue 04:08p	6:24			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/23/2018	Tue 04:08p	Tue 05:41p	1:33	Sales Non Draw Other		103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/23/2018	Tue 05:41p	Tue 09:00p	3:19			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/24/2018	Wed 09:23a	Wed 09:00p	11:37			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/27/2018	Sat 09:41a	Sat 05:01p	7:20			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales

Grouped By: Employee Id; First Name; Last Name; Week Start Date; Week End Date  
 Sorted By: Employee Id Ascending  
 Filtered By: Employee Filter: All Employees; Time Entry Dates: 01/01/2018-02/25/2018; Employee Id not in SchedTestD

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JFI00032632

JORDAN'S FURNITURE INC (6121597)  
 450 REVOLUTIONARY DRIVE  
 EAST TAUNTON, MA 02718  
 United States

**Detailed Calculated Time (Time Entries)**  
**Detailed Calculated Time -MA Sales**

Time Entry Dates: 01/01/2018-02/25/2018

Employee Id: 01161 First Name: Last Name:

Week Start Date: 01/22/2018 Week End Date: 01/28/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/28/2018	Sun 10:39a	Sun 06:01p	7:22			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 01/22/2018 Week End Date: 01/28/2018 )</b>				37:35				

Week Start Date: 01/29/2018 Week End Date: 02/04/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	01/30/2018	Tue 09:44a	Tue 09:01p	11:17			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	01/31/2018	Wed 09:27a	Wed 09:00p	11:33			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/01/2018	Thu 11:43a	Thu 12:48p	1:05			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/02/2018	Fri 11:16a	Fri 11:40a	0:24			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/03/2018	Sat 11:54a	Sat 10:00p	10:06			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/04/2018	Sun 10:45a	Sun 03:02p	4:17			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 01/29/2018 Week End Date: 02/04/2018 )</b>				38:42				

Week Start Date: 02/05/2018 Week End Date: 02/11/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	02/10/2018	?	?	5:00		Hol day No Pay	103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/06/2018	Tue 09:44a	Tue 06:29p	8:45			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/07/2018	Wed 09:43a	Wed 09:00p	11:17			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/10/2018	Sat 09:44a	Sat 05:33p	7:49			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/11/2018	Sun 10:43a	Sun 05:04p	6:21			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 02/05/2018 Week End Date: 02/11/2018 )</b>				39:12				

Week Start Date: 02/12/2018 Week End Date: 02/18/2018

Workday	Date	Calc Start	Calc End	Calc. Hours	Pay Type Full Path	Time Off Name	Cost Center Full Path	Cost Center Name (Level 2)
	02/14/2018	?	?	3:00		PTO	103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/13/2018	Tue 09:37a	Tue 09:01p	11:24			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/14/2018	Wed 09:23a	Wed 06:02p	8:39			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/17/2018	Sat 10:50a	Sat 09:00p	10:10			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
	02/18/2018	Sun 11:13a	Sun 06:02p	6:49			103-Avon Store/013-Avon St - Sales/Sales Consultant	013-Avon St - Sales
<b>Subtotal ( Week Start Date: 02/12/2018 Week End Date: 02/18/2018 )</b>				40:02				

Grouped By: Employee Id; First Name; Last Name; Week Start Date; Week End Date  
 Sorted By: Employee Id Ascending  
 Filtered By: Employee Filter: All Employees; Time Entry Dates: 01/01/2018-02/25/2018; Employee Id not in SchedTestD

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JFI00032633

# **Exhibit 12**

**In The Matter Of:**  
*Matthew Sutton, et al. vs.*  
*Jordan's Furniture, Inc.*

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*Matthew R. Sutton*  
*Vol. I*  
*March 9, 2020*

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**DORIS O. WONG**  
**ASSOCIATES, INC.**

COURT REPORTERS

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Phone (617) 426-2432

*Original File SUTTON\_Matthew.txt*  
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Volume I  
Pages 1 to 104  
Exhibits 1 to 18

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Superior Court Department  
of the Trial Court  
Civil Action No. 19-1763

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- - - - -x
:
MATTHEW SUTTON and AMIE ARESTANI, :
on behalf of themselves and all :
others similarly situated, :
      Plaintiffs, :
:
      vs. :
:
JORDAN'S FURNITURE, INC., :
      Defendant. :
:
- - - - -x

```

DEPOSITION OF MATTHEW R. SUTTON, a witness called by counsel for the Defendant, taken pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure, before Jane M. Williamson, Registered Merit Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Manchel & Brennan P.C., 100 River Ridge Road, Norwood, Massachusetts, on Monday, March 9, 2020, commencing at 10:00 a.m.

PRESENT:

Fair Work, P.C.  
(by Brant Casavant, Esq.)  
192 South Street, Suite 450,  
Boston, MA 02111,  
brant@fairworklaw.com  
617.607.3260  
for the Plaintiffs.

(Continued on Next Page)

1 time. Does that seem --

2 A. Yes.

3 Q. -- like the time you submitted the  
4 application?

5 A. Sorry. I broke the rule. I should have  
6 let you finish.

7 Q. That's okay.

8 A. Yes, that does seem like the date and time.  
9 That seems accurate.

10 Q. And then on Page 1, you had checked  
11 "Position Desired: Retail sales rep full time."  
12 That's the position that you were interested in?

13 A. That is correct.

14 Q. Was there a particular store that you  
15 wanted to work in at Jordan's?

16 A. The Natick store.

17 Q. And was it your understanding that you were  
18 applying for a sales rep position in Natick?

19 A. Yes.

20 Q. And below is listed your employment  
21 history: English language instructor, Ph.D.  
22 candidate, sales manager, U.S. Army Captain; is that  
23 right?

24 A. Yes, it is.

1 Q. And does that accurately describe your  
2 employment -- the date below, it says, "November 30,  
3 1989 to October 2, 2015"?

4 A. Yes.

5 Q. So other than those positions, did you hold  
6 any other positions during that time frame?

7 A. From that time, yeah, probably some temp  
8 assignments and other smaller jobs. But those are  
9 the sort of anchor jobs.

10 Q. And the sales manager position that's  
11 listed, is that the furniture store one that you --

12 A. No. I was a sales manager for a heating  
13 and ventilation designer and marketer, McGill  
14 Airflow Corporation. We sold -- supplier of  
15 ductwork. So we designed systems and marketed them  
16 to area contractors. And I did that for six years.

17 Q. What years?

18 A. I think I left them in 2003, going back to  
19 1997.

20 Q. After you had submitted this online  
21 application, what was the next time you had any  
22 communication about your application for employment  
23 with Jordan's?

24 A. I believe they called me in for an

1 before it was filed?

2 A. Yes, I believe. Yes.

3 Q. And do you have an understanding of what  
4 the claims are in the complaint?

5 A. Yes.

6 Q. And what is that?

7 A. Well, essentially, Jordan's should have  
8 paid employees time and a half on Sunday and an  
9 hourly rate for that day. They should have paid for  
10 overtime hours, and they didn't.

11 Q. And you had testified that you didn't work  
12 overtime hours, though, or you didn't work over a  
13 40-hour work week; is that right?

14 A. To the best of my recollection, I did not  
15 work overtime. I'm pretty sure about that.

16 Q. And is that your full understanding of the  
17 claims in the complaint? Are there any other  
18 claims?

19 A. There are others, but I don't have the  
20 documents in front of me to be able to review the  
21 facts. But I know in principle, that that's the  
22 main thing; what I just stated.

23 Q. And is it your understanding that the class  
24 would include employees who work at stores other

1 than Natick?

2 A. It is my understanding.

3 Q. And what other stores do you believe the  
4 class would be comprised of?

5 A. Probably all of the stores in the Jordan's  
6 chain.

7 Q. Including stores that are outside of  
8 Massachusetts?

9 A. Yes.

10 Q. Do you have an understanding of the class  
11 action process?

12 A. Yes.

13 Q. And what is that based upon?

14 A. Just, I suppose, common knowledge.

15 Q. And what is that understanding?

16 A. Is that it's impractical for an entire  
17 class of individuals -- if it's a large group that's  
18 suffered some sort of wrongdoing, it's impossible  
19 for all of those people to come together and bring a  
20 complaint against a company. So a couple of  
21 individuals are then determined to be the kind of  
22 named plaintiffs in the case, and those are the  
23 names that are on the paperwork, and those are the  
24 ones that go through depositions such as this.

1 Q. And what is the source of that knowledge  
2 that you just described?

3 A. I say, again, common knowledge. I mean,  
4 just being 54 years old and reading all sorts of  
5 different things about class action suits and  
6 watching "A Civil Action" movie. And that's about  
7 the extent of it.

8 Q. How much do you think you're owed from  
9 Jordan's?

10 A. I'm not sure.

11 Q. Do you have a rough estimate?

12 A. I don't.

13 Q. How much do you think the class is owed?

14 A. I have no idea.

15 Q. And why are you willing to be a class  
16 representative?

17 A. Because I think as fine a company as  
18 Jordan's Furniture is, I think this is very clearly  
19 an area where they didn't follow the law.

20 Q. Other than your communications with your  
21 attorney, what is your understanding based on that  
22 Jordan's didn't follow the law?

23 A. I'm not sure I understand the question.

24 Q. So putting aside any communications that

1 you had with Brant or Hillary, your attorneys in the  
2 case, you just made the statement that Jordan's  
3 didn't follow the law. What is that based on?

4 A. Well, it's based on the law in  
5 Massachusetts regarding the requirement for  
6 employees such as me to be paid on Sundays is a  
7 pretty black-and-white thing. And from personal  
8 experience, I know that I wasn't paid an hourly wage  
9 on Sundays.

10 Q. And so when you say it's a black-and-white  
11 thing, how do you know that?

12 A. Well, after then, I went back online, after  
13 I understood the nature of what was going on, and  
14 I've done some research and looked at -- I've also  
15 heard things on the radio. NPR I think had a  
16 special on something related to this; that retailers  
17 weren't paying their employees the hourly wages that  
18 they were supposed to by law.

19 Q. Do you know Amie Arestani?

20 A. No. I know that she's one of the named  
21 plaintiffs in the case, but I've never had any  
22 contact with her, and I don't know her personally.

23 Q. Do you think that you and Ms. Arestani have  
24 the same views on how to handle the case?

1           A.     Right now, it's taking a lot -- May 15th --  
2 well, really April 17th, that will be done.

3           Q.     Have you ever filed for bankruptcy?

4           A.     No.

5           Q.     Do you have any overdue bills or other  
6 outstanding financial obligations that are overdue?

7           A.     No.

8           Q.     Do you have any matters in collection?

9           A.     No.

10          Q.     Do you understand that if the Court does  
11 appoint you as a class rep, that you'll have a  
12 fiduciary responsibility to other people in the  
13 class?

14          A.     I do understand that.

15          Q.     And that you'll have to make decisions on  
16 behalf of all of the class?

17          A.     I understand that.

18          Q.     Do you have any sort of special  
19 relationship or arrangement for compensation to  
20 serve as a class representative?

21          A.     No.

22          Q.     So are you willing to continue to serve as  
23 a class representative, even if your claims aren't  
24 as viable as some of the other class reps?