

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

STEVEN HAMMER,
Plaintiff,
vs.
DAYLIGHT FOODS, INC., et al.
Defendants.

Case No.: 21CV378146

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

This is a putative class action. Plaintiffs allege that Defendant Daylight Foods, Inc. misclassified its drivers as exempt and consequently committed a range of wage and hour violations as to these employees.

Now before the Court is Plaintiffs' motion for preliminary approval of a settlement of the class claims, which is unopposed. The Court issued tentative rulings on September 14 and September 27, 2022, and no one challenged these rulings at the September 29 hearing. The Court now issues its final order, which GRANTS preliminary approval.

I. BACKGROUND

Defendant employed Plaintiff Steven Hammer as an exempt driver from June 2014 to March 2018, and Plaintiff Michael Holdiman in the same capacity from October 2018 to

1 February 2019. (First Amended Class Action Complaint for Damages (“FAC”), ¶ 18.) But
2 Plaintiffs allege that drivers were misclassified as exempt. (See *id.*, ¶ 16.)

3 Plaintiffs allege that Defendant failed to pay drivers overtime compensation and to
4 provide required meal and rest breaks or associated premiums. (FAC, ¶¶ 26–29, 36–37.)
5 Drivers did not receive minimum wages for all hours worked and did not receive all wages owed
6 at discharge or resignation, including overtime and minimum wages and meal and rest period
7 premiums. (*Id.*, ¶¶ 30–31, 38–39.) They did not receive accurate wage statements because,
8 among other things, their wage statements failed to reflect the total number of hours they
9 worked. (*Id.*, ¶¶ 32, 40.) Drivers were not reimbursed for expenses including gas and mileage
10 for required travel between worksites, office equipment, and cell phone usage. (*Id.*, ¶ 33.) And
11 Defendant did not keep complete and accurate payroll records for Plaintiffs and other putative
12 class members. (*Id.*, ¶¶ 34, 41.)

13 Based on these allegations, Plaintiffs assert putative class claims against Defendant for:
14 (1) violation of Labor Code sections 510 and 1198 by failing to pay overtime; (2) violation of
15 Labor Code sections 226.7 and 512, subdivision (a) by failing to provide meal and rest periods;
16 (3) violation of Labor Code section 226.7 by failing to provide rest periods; (4) violation of
17 Labor Code sections 1194 and 1197 by failing to pay minimum wages; (5) violation of Labor
18 Code sections 201 and 202 by failing to timely pay wages at separation of employment;
19 (6) violation of Labor Code section 226, subdivision (a) by failing to provide accurate wage
20 statements; (7) violation of Labor Code sections 2800 and 2802 by failing to reimburse business
21 expenses; and (8) violation of Business & Professions Code section 17200 et seq.

22 Now, Plaintiffs move for an order preliminarily approving the settlement of the class
23 claims, provisionally certifying the settlement class, approving the form and method for
24 providing notice to the class, and scheduling a final fairness hearing.

25 **II. LEGAL STANDARD FOR SETTLEMENT APPROVAL**

26 Generally, “questions whether a [class action] settlement was fair and reasonable,
27 whether notice to the class was adequate, whether certification of the class was proper, and
28 whether the attorney fee award was proper are matters addressed to the trial court’s broad

1 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
2 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
3 260.)

4 In determining whether a class settlement is fair, adequate and reasonable, the
5 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
6 the risk, expense, complexity and likely duration of further litigation, the risk of
7 maintaining class action status through trial, the amount offered in settlement, the
8 extent of discovery completed and the stage of the proceedings, the experience
9 and views of counsel, the presence of a governmental participant, and the reaction
10 of the class members to the proposed settlement.

11 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

12 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
13 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
14 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
15 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
16 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
17 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
18 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
19 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
20 marks omitted.)

21 The burden is on the proponent of the settlement to show that it is fair and
22 reasonable. However “a presumption of fairness exists where: (1) the settlement
23 is reached through arm’s-length bargaining; (2) investigation and discovery are
24 sufficient to allow counsel and the court to act intelligently; (3) counsel is
25 experienced in similar litigation; and (4) the percentage of objectors is small.”

26 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
27 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
28 and objectively analyze the evidence and circumstances before it in order to determine whether

1 the settlement is in the best interests of those whose claims will be extinguished,” based on a
2 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

3 **III. SETTLEMENT PROCESS**

4 After filing this action, Mr. Hammer propounded formal written discovery, including one
5 set of discovery requests addressed specifically to an arbitration agreement that Defendant used.
6 The parties then met and conferred and agreed to exchange informal discovery and attempt
7 mediation.

8 Defendant provided documents relating to its wage-and-hour policies, practices, and
9 procedures, including those regarding meal and rest breaks, driver manifests, and other payroll
10 and operational policies. Plaintiffs reviewed time records, pay records, and information provided
11 by Defendant relating to the size and scope of the class and the number of workweeks at issue.
12 They also interviewed putative class members who worked for Defendant throughout the class
13 period.

14 On May 16, 2022, the parties held a mediation with Lisa Klerman, Esq. While they did
15 not reach a settlement that day, they ultimately accepted a mediator’s proposal resulting in the
16 settlement before the Court.

17 **IV. SETTLEMENT PROVISIONS**

18 The non-reversionary gross settlement amount is \$380,000. Attorney fees of up to
19 \$126,666.66 (one-third of the gross settlement), litigation costs of up to \$20,000, and up to
20 \$7,500 in administration costs (currently estimated at \$6,950) will be paid from the gross
21 settlement. The named plaintiffs will seek incentive awards of \$10,000 each.

22 The net settlement, approximately \$205,833.34, will be allocated to settlement class
23 members proportionally based on their workweeks during the class period. The average payment
24 will be around \$1,633.60 to each of the 126 class members. Class members will not be required
25 to submit a claim to receive their payments. For tax purposes, settlement payments will be
26 allocated 20 percent to wages and 80 percent to penalties and interest. The employer’s share of
27 taxes will be paid separately from the gross settlement. Funds associated with checks uncashed
28 after 180 days will be transmitted to Legal Aid at Work.

1 The parties agreed upon the following release:

2
3 In exchange for the settlement, class members who do not opt out will release
4 any and all claims that were actually alleged or that could have been alleged in the
5 operative complaint, including but not limited to state wage and hour claims for
6 any and all violations of California’s Labor Code, Wage Orders, and Unfair
7 Competition Law based on Defendant’s alleged misclassification of its drivers as
8 exempt, failure to pay for all hours worked (including minimum wages, straight
9 time wages, and overtime wages), failure to provide meal periods, failure to
10 authorize and permit rest periods, failure to timely pay all wages due at the time
11 of termination, failure to furnish accurate, itemized wage statements, failure to
12 timely pay wages during employment, failure to properly reimburse for all
13 business-related expenses, and all damages, interest, penalties, attorneys’ fees,
14 costs, and other amounts recoverable under said causes of action under California
15 law, to the greatest extent permissible.

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17 The release is appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim*
18 *Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

19 **V. FAIRNESS OF SETTLEMENT**

20 Plaintiffs estimate that the maximum exposure for all of the claims in the case would be
21 \$5,736,908.50 to \$7,782,037.10. The entire value of the case essentially depends on whether
22 drivers were misclassified. Plaintiffs argued that drivers are not executives, professionals, or
23 administrative and do not fall within the traditional exemption. Moreover, the average hourly
24 rate of \$25.93 does not satisfy the salary test of double minimum wage when considering the
25 local minimum wage. Furthermore, because drivers work more than 40 hours per week, the flat
26 salary does not compensate them for overtime hours. Plaintiffs’ interviews with drivers revealed
27 that they worked from 10 hours to 14 hours per day, five days per week, or a minimum of 50 and
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1 a maximum of 70 hours per week. Because Defendant does not keep time records of actual
2 hours worked, Plaintiffs argued that drivers worked an average of 60 hours per week.

3 Plaintiffs calculate the exposure for unpaid minimum wages as \$3,519,968 and for unpaid
4 regular wages as \$5,565,096.60. The overtime claims were valued at zero because drivers are
5 subject to the “Motor Carrier Exemption.” Plaintiffs valued the meal and rest break claims at
6 \$1,113,174.90, accounting for the likely preemption of these claims during a portion of the class
7 period. They valued the cell phone reimbursement theory at \$39,616, and did not assign value to
8 the theory based on drivers’ use of their personal vehicles since this was infrequent and was
9 often reimbursed according to driver interviews. The wage statement penalties were estimated at
10 \$112,000 and the waiting time penalties at \$952,149.60. Plaintiffs applied a fifty percent
11 discount to these valuations based on the risks at class certification, another fifty percent
12 discount based on the risk that drivers would fall into the “interstate commerce exemption,” and
13 another thirty-five percent discount for risks on the merits at trial, resulting in a realistic value for
14 the case of \$501,979.49 to \$680,938.25.

15 The settlement represents about 5 percent of the maximum value of the case including
16 penalties, or about 5.7 percent of the full value of the core claims (\$6.7 million). This is at the
17 low end of what the Court would consider approving, so the Court directed Plaintiffs’ counsel to
18 file a supplemental declaration more thoroughly addressing certain issues pertaining to the risks
19 on the merits and other risks in obtaining full recovery here. The Court has reviewed and
20 considered that declaration and credits it. Based on the declaration’s analysis, the Court finds
21 that the settlement is fair and reasonable for purposes of preliminary approval.

22 Of course, the Court retains an independent right and responsibility to review the
23 requested attorney fees and award only so much as it determines to be reasonable. (See
24 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
25 While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel shall
26 submit lodestar information prior to the final approval hearing in this matter so the Court can
27 compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern.*
28

1 *Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of
2 a percentage fee through a lodestar calculation].)

3 **VI. PROPOSED SETTLEMENT CLASS**

4 Plaintiffs request that the following settlement class be provisionally certified:

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6 all exempt drivers employed by Daylight Foods, Inc. (“Defendant”) within the
7 State of California at any time since September 18, 2016 through and including
8 September 18, 2022.

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10 **A. Legal Standard for Certifying a Class for Settlement Purposes**

11 Rule of Court 3.769(d) states that “[t]he court may make an order approving or denying
12 certification of a provisional settlement class after [a] preliminary settlement hearing.” Code of
13 Civil Procedure Section 382 authorizes certification of a class “when the question is one of a
14 common or general interest, of many persons, or when the parties are numerous, and it is
15 impracticable to bring them all before the court”

16 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
17 (1) an ascertainable class and (2) a well-defined community of interest among the class
18 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
19 *Drug Stores*)). “Other relevant considerations include the probability that each class member
20 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
21 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
22 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
23 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
24 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

25 In the settlement context, “the court’s evaluation of the certification issues is somewhat
26 different from its consideration of certification issues when the class action has not yet settled.”
27 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
28 settlement-only context, the case management issues inherent in the ascertainable class

1 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
2 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
3 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
4 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

5 **B. Ascertainable Class**

6 A class is ascertainable “when it is defined in terms of objective characteristics and
7 common transactional facts that make the ultimate identification of class members possible when
8 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
9 (*Noel*.) A class definition satisfying these requirements

10
11 puts members of the class on notice that their rights may be adjudicated in the
12 proceeding, so they must decide whether to intervene, opt out, or do nothing and
13 live with the consequences. This kind of class definition also advances due
14 process by supplying a concrete basis for determining who will and will not be
15 bound by (or benefit from) any judgment.

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17 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

18 “As a rule, a representative plaintiff in a class action need not introduce evidence
19 establishing how notice of the action will be communicated to individual class members in order
20 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
21 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
22 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
23 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
24 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
25 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
26 own account records. No more is needed.”].)

1 Here, the estimated 126 class members are readily identifiable based on Defendant's
2 records, and the settlement class is appropriately defined based on objective characteristics. The
3 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

4 **C. Community of Interest**

5 The "community-of-interest" requirement encompasses three factors: (1) predominant
6 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
7 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
8 Cal.4th at pp. 326, 332.)

9 For the first community of interest factor, "[i]n order to determine whether common
10 questions of fact predominate the trial court must examine the issues framed by the pleadings
11 and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.*
12 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict
13 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
14 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
15 jointly tried, when compared with those requiring separate adjudication, are so numerous or
16 substantial that the maintenance of a class action would be good for the judicial process and to
17 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
18 (*Lockheed Martin*)). "As a general rule if the defendant's liability can be determined by facts
19 common to all members of the class, a class will be certified even if the members must
20 individually prove their damages." (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

21 Here, common legal and factual issues predominate. Plaintiffs' claims all arise from
22 Defendant's wage and hour practices applied to the similarly-situated class members.

23 As to the second factor,

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25 The typicality requirement is meant to ensure that the class representative is able
26 to adequately represent the class and focus on common issues. It is only when a
27 defense unique to the class representative will be a major focus of the litigation,
28 or when the class representative's interests are antagonistic to or in conflict with

1 the objectives of those she purports to represent that denial of class certification is
2 appropriate. But even then, the court should determine if it would be feasible to
3 divide the class into subclasses to eliminate the conflict and allow the class action
4 to be maintained.

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6 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
7 brackets, and quotation marks omitted.)

8 Like other members of the class, Plaintiffs were employed by Defendant as exempt
9 drivers and allege that they experienced the violations at issue. The anticipated defenses are not
10 unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict
11 with those of the class.

12 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
13 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
14 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
15 representative does not necessarily have to incur all of the damages suffered by each different
16 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
17 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
18 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
19 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
20 omitted.)

21 Plaintiffs have the same interest in maintaining this action as any class member would
22 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
23 adequacy of representation.

24 **D. Substantial Benefits of Class Certification**

25 "[A] class action should not be certified unless substantial benefits accrue both to
26 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
27 internal quotation marks omitted.) The question is whether a class action would be superior to
28 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of

1 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
2 class action is proper where it provides small claimants with a method of obtaining redress and
3 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
4 120–121, internal quotation marks omitted.)

5 Here, there are an estimated 126 class members. It would be inefficient for the Court to
6 hear and decide the same issues separately and repeatedly for each class member. Further, it
7 would be cost prohibitive for each class member to file suit individually, as each member would
8 have the potential for little to no monetary recovery. It is clear that a class action provides
9 substantial benefits to both the litigants and the Court in this case.

10 **VII. NOTICE**

11 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
12 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
13 for class members to follow in filing written objections to it and in arranging to appear at the
14 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
15 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
16 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
17 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
18 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
19 3.766(e).)

20 Here, the notice describes the lawsuit, explains the settlement, and instructs class
21 members that they may opt out of the settlement or object. The gross settlement amount and
22 estimated deductions are provided. Class members are informed of their qualifying workweeks
23 as reflected in Defendant’s records and instructed how to dispute this information. The notice
24 makes it clear that class members may appear at the final fairness hearing to make an oral
25 objection without filing a written objection. Class members are given 60 days to request
26 exclusion from the class, submit a written objection to the settlement, or dispute their workweek
27 information.
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1 At the Court's direction, the notice was modified to instruct class members that they may
2 opt out of or object to the settlement by simply providing their name, without the need to provide
3 their address or other identifying information. The notice describes how notice of final
4 judgment will be provided to the class. (Cal. Rules of Court, Rule 3.771(b).) The notice was
5 corrected with regard to the *cy pres* recipient.

6 Regarding appearances at the final fairness hearing, the notice was further modified to
7 instruct class members as follows:

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9 Hearings before the judge overseeing this case will be conducted remotely. (As
10 of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class
11 members who wish to appear should contact class counsel at least three days
12 before the hearing if possible. Instructions for appearing remotely are provided at
13 https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and
14 should be reviewed in advance. Class members may appear remotely using the
15 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll
16 free conference call number for Department 1.

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18 Turning to the notice procedure, the parties have selected Phoenix Settlement
19 Administrators as the settlement administrator. The administrator will mail the notice packet
20 within 35 calendar days of preliminary approval, after updating class members' addresses using
21 the National Change of Address Database. Any returned notices will be re-mailed to any
22 forwarding address provided or located using skip traces and other searches. Class members
23 who receive a re-mailed notice will have an additional 10 days to respond. These notice
24 procedures are appropriate and are approved.

25 **VIII. CONCLUSION**
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1 Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing
2 shall take place on **February 16, 2023**¹ at 1:30 p.m. in Dept. 1. The following class is
3 preliminarily certified for settlement purposes:

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5 all exempt drivers employed by Daylight Foods, Inc. ("Defendant") within the
6 State of California at any time since September 18, 2016 through and including
7 September 18, 2022.

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9 Before final approval, Plaintiffs shall lodge any individual settlement agreements they
10 may have executed in connection with their employment with Defendant for the Court's review.

11 **IT IS SO ORDERED.**

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13 Date: October 3, 2022

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The Honorable Sunil R. Kulkarni
Judge of the Superior Court

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28 ¹ The Court's tentative ruling had said February 9, but due to scheduling issues, the Court is now
setting the final approval date for February 16.