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23-2-00175-08
ORGMT 19
Order Granting Motion Petition
16669898



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SUPERIOR COURT

2024 MAY -8 PM 3:43

COWLITZ COUNTY
STACI L. MYKLEBUST, CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

RYAN SEARCY, individually and on behalf
of all those similarly situated,

Plaintiff,

vs.

NIPPON DYNAWAVE PACKAGING
COMPANY, LLC., a foreign limited liability
company,

Defendant.

No. 23-2-00175-08

ORDER
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
AUTHORIZING NOTICE, AND
SETTING FINAL FAIRNESS HEARING

(CLERK'S ACTION REQUIRED)

This matter came before the Court on Plaintiff's Motion for Conditional Settlement Class Certification and Preliminary Approval of Class Action Settlement ("Plaintiff's Motion"). In conjunction with Plaintiff's Motion, Plaintiff has filed a copy of the Parties' signed Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"), attached as Exhibit 1 to the Declaration of James B. Pizl in support of Plaintiff's Motion.

WHEREAS, the Court has considered Plaintiff's Motion, the Parties' signed Settlement Agreement, and all of the other pleadings, papers, and filings herein;

WHEREAS, as used herein, all terms defined in the Parties' Settlement Agreement shall have the same meaning here; and

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ORDER CONDITIONALLY CERTIFYING SETTLEMENT
CLASS, GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, AUTHORIZING NOTICE
AND SETTING FINAL FAIRNESS HEARING - 1

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ENTENTE LAW PLLC
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PUYALLUP, WA 98373-3690
(253) 446-7668

1 WHEREAS, good cause appearing that the Parties' Settlement Agreement is within the
2 range of reasonableness and is presumptively valid,

3 1. NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

4 Pursuant to Washington Superior Court Civil Rule 23(a) and (b)(3), and in conjunction
5 with the Settlement Agreement, the Court hereby certifies this case as a class action, solely for
6 purposes of implementing the Parties' Settlement Agreement, on behalf of the following Proposed
7 Settlement Class:

8 All individuals who were employed by Nippon in the State of Washington
9 in positions paid on an hourly basis at any time from February 23, 2020,
 through April 30, 2024.

10 The Settlement Class shall exclude any persons who opt out of the Settlement Class in accordance
11 with the terms of the Settlement Agreement and Paragraph 17 of this Order.

12 2. The Court finds that the prerequisites of CR 23(a) and (b)(3) have been satisfied for
13 the Settlement Class. Specifically, the Court finds as follows:

14 a. The Settlement Class, which consists of approximately 550 individuals, is
15 so numerous that joinder of all members is impracticable. In reaching this conclusion, the
16 Court has considered not just the number of Class members, but the interests of judicial
17 efficiency, the relatively small value of many Settlement Class Member claims, and other
18 factors relevant to the interest and ability of employees to individually join or bring claims
19 against a current or former employer.

20 b. There are questions of law and fact common to the Settlement Class,
21 including, but not limited to:

22 (1) whether Defendant violated WAC 296-126-092 by failing to
23 provide adequate rest breaks and meal periods to Plaintiff and members of the
24 Settlement Class; and

1 (2) whether Defendant was required to and failed to compensate
2 Plaintiff and members of the Settlement Class with additional wages when rest
3 breaks and meal periods were not provided in compliance with Washington law.

4 c. The claims of the Named Plaintiff are typical of the claims of the Settlement
5 Class, and the Named Plaintiff and Class Counsel will fairly and adequately protect the
6 interests of the Settlement Class.

7 d. Certification of a Settlement Class under CR 23(b)(3) is appropriate because
8 questions of law and fact common to all Settlement Class Members predominate over any
9 questions affecting only individual members, and a class action is superior to other
10 available means for the fair and efficient resolution of this controversy. Such common
11 questions of law and fact include but are not limited to those identified in subparagraph (b)
12 above.

13 3. Pursuant to CR 23, Named Plaintiff Ryan Searcy is hereby appointed and
14 designated, for all purposes, as the Class Representative of the Settlement Class, and James B.
15 Pizl, Entente Law PLLC, and Colin F. McHugh, and McHugh Law, PLLC are hereby appointed
16 and designated as Class Counsel for the Settlement Class.

17 4. Class Counsel is authorized to act on behalf of the Settlement Class with respect to
18 all acts or consents required by or which may be required pursuant to the Settlement Agreement.

19 5. The Court approves the proposed form and content of the Notice of Proposed
20 Settlement of Class Action ("Class Notice") that is attached as Exhibit A of Exhibit 1 to the
21 Declaration of James B. Pizl.

22 6. The Court hereby appoints CPT Group Class Action Administrators as Settlement
23 Administrator responsible for establishing a Qualified Settlement Fund ("QSF") pursuant to IRC
24 § 468B(g), mailing and/or emailing Class Notices and settlement awards to Settlement Class
25 Members, mailing any tax payments to the appropriate state and federal taxing authorities,
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1 processing and filing all appropriate tax forms and documents including but not limited to W2s,
2 1099s, 1120-SF, etc.

3 7. Consistent with the terms of the Settlement Agreement, the Settlement
4 Administrator is hereby directed to email and mail, or cause to be mailed, by first-class mail, a
5 copy of the Class Notice to each Settlement Class Member no later than forty (40) calendar days
6 following the date of this Order.

7 8. Pursuant to CR 23, the Court hereby finds and concludes that the form and manner
8 of giving notice by mailing a Class Notice to each individual Settlement Class Member, as required
9 by the Settlement Agreement and by this Order, is the best notice practicable under the
10 circumstances. Said notice procedures fully satisfy the requirements of CR 23(c)(2) and CR 23(e)
11 and the requirements of due process.

12 9. The Court conditionally approves Class Counsel's request for an attorneys' fees
13 award of \$1,350,000 or 30% of the gross Settlement Fund, plus actual and projected litigation costs
14 of approximately \$7,500. This approval is preliminary and is subject to modification at the time of
15 final settlement approval upon a showing of appropriate cause.

16 10. The Court preliminarily approves up to \$15,000.00 to be paid from the settlement
17 fund to compensate CPT Group Class Action Administrators for its services provided in the
18 administration of the settlement. This approval is preliminary and is subject to modification at the
19 time of final settlement approval upon a showing of appropriate cause.

20 11. The Court preliminarily approves an award of an incentive payment of \$7,500 to
21 Ryan Searcy in recognition of the substantial benefits obtained for the Settlement Class through
22 his work as class representative, the time devoted by him in consulting with counsel about the facts
23 of the case, litigation strategy, and his input and assistance during settlement negotiations at
24 mediation.

25 12. On September 4, 2024, at ~~9:00 a.m.~~ ^{2:00 pm}, a Final Settlement Approval Hearing shall be
26 held at the Cowlitz County Superior Court in Kelso, Washington, to determine whether the Court

1 should approve the fairness, adequacy, and reasonableness of the terms and conditions of the
2 Settlement Agreement and whether the Court should enter the Parties' proposed Final Order and
3 Judgment.

4 13. Plaintiff shall file memoranda or other papers they may wish to submit in support
5 of the proposed Settlement Agreement no later than seven (7) court days before the Final
6 Settlement Approval Hearing. The memoranda shall confirm that the mailing of the Class Notice
7 was completed in accordance with the requirements of this Order and provide information
8 concerning the individuals that have opted out of the settlement and any objections received. A
9 draft copy of these pleadings shall be provided to Defendant before filing.

10 14. Any person who is eligible to exclude him or herself from the Settlement Class
11 under the terms of the Settlement Agreement must do so by following the instructions for
12 requesting exclusion as set forth in the Class Notice. All requests for exclusion from the Settlement
13 Class must be postmarked, hand-delivered, or emailed to the Settlement Administrator no later
14 than forty-five (45) days after the date of mailing of the Class Notice, in accordance with the
15 instructions in the Class Notice and the terms and requirements of the Settlement Agreement, or
16 they shall be deemed void and ineffective.

17 15. Any Settlement Class Member may enter an appearance through counsel of such
18 Settlement Class Member's own choosing and at such Settlement Class Member's own expense.
19 Any Settlement Class Member who does not personally appear or otherwise enter an appearance
20 at the Final Settlement Approval Hearing shall be deemed to be represented by Class Counsel in
21 this litigation as provided above.

22 16. Any Settlement Class Member who has not validly requested exclusion may submit
23 written objections to the Settlement Agreement by mailing to the Settlement Administrator, at the
24 addresses provided in the Settlement Notice, a written statement containing the Settlement Class
25 Member's name, current address, and the substance of his or her objection (including any briefs
26 and supporting papers) no later than forty-five (45) days after the date of mailing of the Class

1 Notice. Any Settlement Class Member who presents written objections in the manner prescribed
2 above may also appear personally or through counsel at the Final Settlement Approval Hearing to
3 express the Settlement Class Member's views regarding the Settlement Agreement. Only
4 Settlement Class Members who object to the Settlement Agreement in writing, in person, or by
5 appearance through counsel, in accordance with the procedures set forth in this Order, shall be
6 permitted to appeal or otherwise seek review of this Court's decision approving or rejecting the
7 Settlement Agreement. Failure to follow the procedures for objecting set forth herein shall
8 constitute a waiver of a Settlement Class Member's right to object to the Settlement Agreement.

9 17. Pending this Court's ruling on final approval of the Settlement Agreement, the
10 Named Plaintiff and all Settlement Class Members are enjoined from filing or prosecuting any
11 claims, suits or administrative proceedings regarding claims released in the Settlement Agreement,
12 unless and until the Court's final settlement approval hearing.

13 18. The released claims specifically include, but are not limited to, any claims based
14 on: (1) any alleged missed, interrupted, shortened, untimely, unpaid, and/or non-compliant rest
15 breaks and/or meal periods; (2) any claims for alleged unpaid overtime; and (3) any attendant
16 claims for unpaid wages, overtime payments, premium payments, interest, exemplary damages,
17 and attorneys' fees and costs relating to any of the foregoing as they relate to the named Defendant,
18 as well as its respective past, current, or future successors and assigns, together with each of their
19 respective parent companies (including Nippon Paper Industries Company, Ltd.), subsidiaries,
20 related or affiliated companies, members, shareholders, investors, owners, officers, directors,
21 employees, agents, attorneys, and insurers, along with any other individual or entity who could be
22 jointly or severally liable for any of the claims alleged in this action or released by the parties'
23 Settlement Agreement.

24 19. The Final Settlement Approval Hearing, and all dates provided for herein, may,
25 without further notice to the Settlement Class, be continued or adjourned by order of this Court.

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1 20. Consistent with the Settlement Agreement, neither this Order, nor the fact or
2 substance of the Settlement Agreement, shall be considered a concession or admission, nor shall
3 they be used as evidence in any proceeding for the purpose of establishing Defendant's liability or
4 wrongdoing.

5 21. In the event the Settlement Agreement does not become effective in accordance
6 with the terms of the Settlement Agreement, or the Settlement Agreement is not finally approved,
7 or the Settlement Agreement is terminated, canceled, or fails to become effective for any reason,
8 this Order shall be vacated and rendered null and void, the Settlement Class shall be decertified,
9 and all claims and defenses previously asserted by the Parties shall be reinstated and the Court
10 shall enter further appropriate orders governing the proceedings.

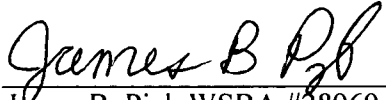
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12 IT IS SO ORDERED this 8 day of May, 2024.

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15 The Honorable
16 Judge Cowlitz
17 Cowlitz County Superior Court
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Presented by:

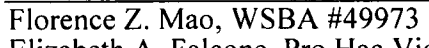
ENTENTE LAW PLLC


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Attorneys for Plaintiff

Copy Received; Approved as to Form;
Notice of Presentation Waived:

OGLETREE, DEAKINS, NASH,
SMOAK, & STEWART PC


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Elizabeth A. Falcone, Pro Hac Vice
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