

ENDORSED FILED
SUPERIOR COURT

FEB 23 2023

COWLITZ COUNTY
STACI MYKLEBUST, Clerk

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**

CLASS ACTION COMPLAINT FOR
DAMAGES

Plaintiff claims against Defendant as follows:

I. NATURE OF ACTION

1.1. Plaintiff Ryan Searcy, individually and on behalf of all individuals currently or formerly employed by Defendant in Washington state at any time on or after February 23, 2020 in positions paid on an hourly basis brings this action for money damages and statutory penalties for violations of Washington's Industrial Welfare Act ("IWA"), RCW 49.12, Minimum Wage Act ("MWA"), RCW 49.46, Wage Payment Act ("WPA"), RCW 49.48 and Wage Rebate Act ("WRA"), RCW 49.52.

1 **II. JURISDICTION AND VENUE**

2 2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to
3 RCW 2.08.010.

4 2.2. Venue in Cowlitz County is appropriate pursuant to RCW 4.12.025.

5 2.3. Defendant transacts business in Cowlitz County and at least some of the acts and
6 omissions alleged in this Complaint took place in the State of Washington and Cowlitz County.

7 **III. PARTIES**

8 3.1. Defendant Nippon Dynawave Packaging Company, LLC, hereafter "Nippon" is
9 organized under the laws of the state of Delaware and maintains its principal place of business in
10 Longview, Washington. Nippon is an employer for the purposes of the IWA, MWA, WPA and
11 WRA.

12 3.2. Plaintiff Ryan Searcy, hereafter "Searcy", is a resident of Longview, Washington
13 and is currently employed by Defendant and paid on an hourly basis.

14 **IV. FACTUAL ALLEGATIONS**

15 4.1. Plaintiff and members of the putative class are or were employed by Defendant in
16 Washington State at any time between February 23, 2020 and thereafter in positions paid on an
17 hourly basis.

18 4.2. Defendant created and maintained timekeeping systems, work schedules, staffing
19 levels, job requirements and a working environment that discouraged Plaintiff and members of the
20 putative class from taking rest periods and meal periods in compliance with Washington law.

21 4.3. At times, Plaintiff and members of the putative class were required to work more
22 than three consecutive hours without a rest period.

23 4.4. With respect to Plaintiff and members of the putative class, Defendant failed to
24 establish maintain a process to record of the occurrence, time, and duration of paid rest periods.

25 4.5. With respect to Plaintiff and members of the putative class, Defendant failed to
26 maintain accurate records of the occurrence, time, and duration of paid rest periods.

1 4.6. With respect to Plaintiff and members of the putative class, Defendant failed to
2 provide a process to report instances of when they were required to work over three consecutive
3 hours without a rest period, when they did not receive a rest period in at least a ten-minute duration
4 for each four hours worked.

5 4.7. Defendant did not ensure Plaintiff and members of the putative class received a ten-
6 minute rest period on the employer's time for every four hours worked.

7 4.8. Defendant did not compensate Plaintiff and members of the putative class for an
8 additional ten minutes of work for each instance it required them to work greater than three
9 consecutive hours without a rest period, provided a rest period in a duration of less than ten
10 minutes, or did not provide a rest period of at least ten minutes in duration for each four hours
11 worked.

12 4.9. Plaintiff and members of the putative class worked shifts greater than five hours in
13 length and, at times, were not provided and did not waive their rights to meal periods in compliance
14 with Washington law.

15 4.10. At times, Plaintiff and members of the putative class worked more than five
16 consecutive hours without a meal period.

17 4.11. Defendant did not compensate Plaintiff and members of the putative class for an
18 additional thirty minutes of work for each time it required them to work shifts greater than five
19 hours in length and meal periods were not provided, or when Plaintiff and members of the putative
20 class worked more than five consecutive hours without a meal period.

21 4.12. At times when total compensable time, including additional time to compensate for
22 missed or otherwise noncompliant meal and rest periods totaled over forty in a workweek,
23 Defendant did not pay Plaintiff and members of the putative class one and one-half times their
24 regular rate of pay for all hours over forty in a workweek.

25 4.13. Plaintiff's interests in this matter do not conflict with the interests of the putative
26 class.

1 (6) whether Defendant failed to compensate Plaintiff and members of the
2 putative class for an additional ten minutes of work for each instance it required them to work
3 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiff and
4 members of the putative class received a compliant rest period of at least ten minutes in length, on
5 the employer's time, for each four hours worked;

6 (7) whether Defendant failed to provide a compliant meal period of at least
7 thirty minutes for shifts greater than five hours in length;

8 (8) whether Plaintiff and members of the putative class, at times, worked
9 greater than five consecutive hours without a meal period;

10 (9) whether Defendant was required to compensate Plaintiff and members of
11 the putative class for an additional thirty minutes of work for each instance it failed to provide a
12 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
13 required them to work greater than five consecutive hours without a meal period;

14 (10) whether Defendant failed to compensate Plaintiff and members of the
15 putative class for an additional thirty minutes of work for each instance it failed to provide a
16 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
17 required them to work greater than five consecutive hours without a meal period;

18 (11) whether Defendant failed to pay Plaintiff and members of the putative class
19 one and one-half their regular rate of pay for all hours over forty in a workweek, inclusive of the
20 additional time to compensate for noncompliant or missed meal and rest periods; and

21 (12) whether Defendant acted willfully and with the intent of depriving Plaintiff
22 and members of the putative class of wages or other compensation.

23 5.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of
24 all class members and of Defendant's anticipated defenses thereto.

25 5.6. The named Plaintiff and his counsel will fairly and adequately protect the interests
26 of the class as required by CR 23(a)(4).

1 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
2 of law or fact common to members of the class predominate over any questions affecting only
3 individual members, and because a class action is superior to other available methods for the fair
4 and efficient adjudication of the controversy.

5 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO ENSURE REST**
6 **PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
7 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS IN**
8 **VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND**
9 **WASHINGTON WAGE PAYMENT ACT**

10 6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

11 6.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
12 regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten
13 minutes, on the employer's time, for each four hours of working time.

14 6.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
15 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
16 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

17 6.4. A rest period violation is a wage violation with employees entitled to ten minutes
18 of additional compensation for each instance they are required to work longer than three
19 consecutive hours without a rest break. *Id* at 849.

20 6.5. Defendant violated the IWA and its implementing regulation by failing to ensure
21 Plaintiff and members of the putative class received a ten-minute paid rest period for every four
22 hours worked and by failing to keep records of the occurrence, time and duration of rest periods
23 taken, by failing to implement a process for Plaintiff and members of the putative class to report
24 missed or otherwise noncompliant rest periods and by creating work schedules, staffing levels and
25 conditions of work that discouraged paid rest periods.

26 6.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and
members of the putative class for an additional ten minutes of work for each instance a rest period
was not provided in compliance with IWA.

1 6.7. As a result of Defendant's acts and omissions, Plaintiff and members of the putative
2 class have been damaged in amounts as will be proven at trial.

3 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE**
4 **MEAL PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
5 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS OF**
6 **THE WASHINGTON MINIMUM WAGE ACT AND WASHINGTON WAGE**
7 **PAYMENT ACT**

8 7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

9 7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
10 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their
11 employees for work shifts greater than five hours in length and prohibits employees from working
12 more than five consecutive hours without a meal period.

13 7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
14 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
15 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

16 7.4. A meal period violation is a wage violation with employees entitled to thirty
17 minutes of additional compensation for each instance they are required to work more than five
18 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,
19 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

20 7.5. Defendant violated the IWA and its implementing regulation by failing to provide
21 Plaintiff and members of the putative class with compliant thirty-minute meal periods and by
22 creating work schedules, staffing levels and conditions of work that discouraged compliant meal
23 periods.

24 7.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and
25 members of the putative class for thirty minutes of work for each instance a meal period was not
26 provided in compliance with the IWA.

 7.7. As a result of Defendant's acts and omissions, Plaintiff and members of the putative
class have been damaged in amounts as will be proven at trial.

1 **VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
2 **OVERTIME WAGES IN VIOLATION OF THE WASHINGTON MINIMUM**
3 **WAGE ACT**

4 8.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

5 8.2. In weeks where the total number of compensable hours including additional
6 compensable time for Defendant’s failure to provide rest periods and meal periods exceeded forty,
7 Defendant has violated the Washington State Minimum Wage Act, RCW 49.46.130, by failing to
8 pay Plaintiff and members of the putative one and one-half times their regular rate of pay for those
9 hours.

10 8.3. As a result of Defendant’s acts and omissions, Plaintiff and members of the putative
11 class have been damaged in amounts as will be proven at trial.

12 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE WILLFUL WITHHOLDING OF**
13 **WAGES IN VIOLATION OF THE WASHINGTON WAGE REBATE ACT**

14 9.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

15 9.2. There is no “fairly debatable” issue of law or any objectively or subjectively
16 reasonable (“bona fide”) dispute whether additional wages are owed to compensate for meal and
17 rest periods not provided in compliance with Washington law.

18 9.3. The failure to pay additional wages to compensate for meal and rest periods not
19 provided in compliance with Washington law was not the result of administrative or clerical errors.

20 9.4. By the foregoing, Defendant’s actions in failing to pay the additional wages to
21 compensate for failing to provide meal and rest periods in compliance with Washington law
22 constitutes willful withholding of wages due in violation of RCW 49.52.050 and 070.

23 9.5. As a result of Defendant’s acts and omissions, Plaintiff and members of the putative
24 class have been damaged in amounts as will be proven at trial.
25
26

