

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF PEND OREILLE

3 WILLIAM FAIRCHILD & JACOB
4 ACKLEY,

5 Plaintiffs,

6 v.

7 PONDERAY NEWSPRINT CO.,

8 Defendant.

No. 14-2-00061-4

9 NOTICE OF SETTLEMENT CLASS
10 CERTIFICATION AND PROPOSED
11 CLASS ACTION SETTLEMENT

12 **THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY**

13 You are receiving this notice because you were employed in a qualifying job classification by
14 Ponderay Newsprint Company (“Ponderay”) at some time between April 11, 2011 and
15 October 31, 2014 (the “Settlement Class Period”). Qualifying job classifications are dry end
16 tester, winder operator, winder fourth hand, winder fifth hand, wrapline operator, utility, lead
17 loader, and shipper.

18 This case involves claims for compensation under Washington state wage and hour laws
19 based on the allegation that employees who are members of the Settlement Class were not
20 provided lawful meal periods. The purpose of this notice is to provide you with information
21 about the Court’s certification of this case as a class action for settlement purposes, the
22 parties’ proposed settlement of the case (the “Settlement”), and your rights with respect to
23 the settlement class certification and the Settlement.

24 **WHAT IS THIS CASE ABOUT?**

25 Plaintiffs William Fairchild and Jacob Ackley allege that Ponderay violated the Washington
26 Industrial Welfare Act and related state laws by failing to provide lawful meal periods to
Ponderay employees working in the qualifying job classifications of dry end tester, winder
operator, winder fourth hand, winder fifth hand, wrapline operator, utility, lead loader, and
shipper.

The Court has not ruled on the merits of Plaintiffs’ claims, and has not decided whether
Plaintiffs or Ponderay will win the case. However, the parties have engaged in lengthy
settlement negotiations, and have agreed on a proposed settlement of the lawsuit that they
believe is fair, adequate and reasonable, and in the best interests of the members of the
Settlement Class. The terms of the proposed Settlement are summarized below. If the
Settlement is approved by the Court at the final settlement approval hearing on May 28,
2015, settlement payments will be distributed to members of the Settlement Class as

1 described below. In addition, the Court will enter an order permanently dismissing all claims
2 that were or could have been asserted in the lawsuit.

3 **WHAT IS A SETTLEMENT CLASS?**

4 On March 6, 2015, the Court certified this case as a class action for purposes of the proposed
5 Settlement. A “class action” is a type of lawsuit in which the named plaintiffs bring a lawsuit
6 both for themselves and on behalf of a larger group of similarly situated “class members.” If
a court certifies (approves) a lawsuit as a class action, the final outcome of the lawsuit
applies to all members of the class unless they choose to be excluded from the lawsuit.

7 In this case, the Court has certified the case as a class action for settlement purposes and has
8 approved William Fairchild and Jacob Ackley (the “Named Plaintiffs”) to serve as the class
9 representatives for the Settlement Class and Adam J. Berger and Martin S. Garfinkel of the
10 Schroeter Goldmark & Bender law firm in Seattle and Geoffrey D. Swindler of the Law
11 Office of Geoffrey D. Swindler, P.S. in Spokane to act as the attorneys for the Settlement
12 Class (“Settlement Class Counsel”). The Court has only certified this case as a class action
13 for purposes of deciding whether to approve the parties’ proposed Settlement – the Court has
14 not decided whether this case should be certified as a class action for purposes of deciding
the merits of Plaintiffs’ claims. If the Court decides not to grant final approval of the
Settlement for any reason, the Settlement Class will be decertified (voided) and the Parties
will proceed with litigation of the case. If the Court grants final approval of the Settlement
described below, and you choose to remain a member of the Settlement Class, you will be
bound by the proposed Settlement Agreement.

15 **WHAT ARE THE REASONS FOR THIS SETTLEMENT?**

16 Since Plaintiffs filed their Complaint on April 9, 2014, both Plaintiffs and Ponderay have
17 exchanged information and documents concerning Plaintiffs’ claims and Ponderay’s
18 defenses, and have investigated the facts and law applicable to the case. As part of this
19 investigation, the parties and their attorneys have collected and analyzed extensive payroll
and timekeeping data relating to the Settlement Class.

20 Plaintiffs and their attorneys agreed to the proposed Settlement after considering and
21 comparing the risks and benefits of continued litigation versus settlement of the case on the
22 proposed settlement terms. Among the factors considered were the likelihood that the
23 Settlement will provide fair reimbursement for members of the Settlement Class; the risks,
24 difficulties, and uncertainties in obtaining and maintaining certification of a litigation class
and in proving liability and damages at trial; and the expense and delay inherent in continued
litigation and appeals. Plaintiffs and their attorneys balanced these risks in determining that
the proposed Settlement is fair, adequate and reasonable, and in the best interests of the
Settlement Class.

25 Ponderay has concluded that further litigation of the case would be burdensome and
26 expensive for all parties. Unless the case is resolved through the Settlement, Ponderay will be
required to continue expending time, energy and resources on its defense of Plaintiffs’
claims. Ponderay also recognizes that litigating this case on a class action basis would be

1 expensive and time consuming. Ponderay has, therefore, agreed to the terms set forth in the
2 proposed Settlement Agreement in order to finally resolve all claims in the lawsuit.

3 **DESCRIPTION OF THE PROPOSED SETTLEMENT**

4 The following is a summary of the basic provisions of the proposed Settlement. The specific
5 and complete terms are contained in the proposed Settlement Agreement, a copy of which is
6 on file with the Clerk of the Court, Pend Oreille County Superior Court, Newport,
7 Washington.

8 • Defendant will create a Settlement Fund of \$1,000,000, which will be used to pay all
9 individual settlement awards for members of the Settlement Class, Settlement Class
10 Counsel's attorneys' fees and costs, and the Named Plaintiffs' incentive payments. The gross
11 amount of the Settlement Fund, before subtraction of attorneys' fees, costs, and incentive
12 payments, is approximately 100% of the damages and prejudgment interest alleged by
13 Plaintiffs in this case.

14 • The individual settlement amounts paid to each member of the Settlement Class will
15 be based on Ponderay's payroll and timekeeping records, which show how many hours each
16 member of the Settlement Class worked in a qualifying position during the Settlement Class
17 Period and their pay rates for those hours. Settlement awards will be calculated and paid on a
18 pro rata basis for each Settlement Class member, based on the number of meal periods
19 allegedly missed and applicable pay rates of each Settlement Class member during the
20 Settlement Class Period, plus prejudgment interest on those amounts. Each Settlement Class
21 member's pro rata share will be calculated using the net amount of the \$1,000,000 Settlement
22 Fund remaining after subtracting the amounts for attorneys' fees and costs and the Named
23 Plaintiffs' incentive payment, as approved by the Court.

24 • The individual settlement awards payable under the terms of the Settlement include
25 both back pay and prejudgment interest components, calculated on an individual basis for
26 each Settlement Class member. The back pay portion of the settlement award shall be
reduced by the employee's share of applicable income and payroll taxes (and such sums will
be reported on an IRS W-2 form). The portion allocated to prejudgment interest will not be
reduced (and such sums will reported on an IRS Form 1099).

• Subject to approval by the Court, Class Counsel will request an award of attorneys' fees equal to 27.5% of the Settlement Fund, plus out-of-pocket costs of approximately \$12,500, which amounts will be paid out of the Settlement Fund.

• Subject to approval by the Court, the Named Plaintiffs will receive incentive payments out of the Settlement Fund of \$5,000 each. This sum is to compensate them for their time and effort expended as the representatives of the Settlement Class and the benefits conferred on the Settlement Class by their efforts, and will be in addition to their own settlement awards.

1 Martin S. Garfinkel & Adam J. Berger
2 Re: Ponderay Class Action Settlement
3 Schroeter Goldmark & Bender
4 810 Third Avenue, Suite 500
5 Seattle, WA 98104

6 If you submit a valid and timely request for exclusion from the Settlement Class, you will not
7 be entitled to receive any benefits under the proposed Settlement Agreement, nor will you be
8 bound by its terms or any Final Judgment if the Settlement Agreement is approved by the
9 Court. In that event, you may pursue any overtime claims you may have against Ponderay by
10 filing your own lawsuit, subject to all applicable defenses.

11 **3. To Object to the Settlement:**

12 If you wish to remain in the Settlement Class but object to any aspect of the Settlement, you
13 must file a written objection with the Court by April 14, 2015. You must also serve copies of
14 your written objection upon Class Counsel and Ponderay's counsel at the addresses listed
15 below and postmarked no later than April 14, 2015:

16 Martin S. Garfinkel & Adam J. Berger
17 Re: Ponderay Class Action Settlement
18 Schroeter Goldmark & Bender
19 810 Third Avenue, Suite 500
20 Seattle, WA 98104

21 Thomas W. McLane
22 Re: Ponderay Class Action Settlement
23 Randall | Danskin, P.S.
24 601 W. Riverside Avenue, Ste. 1500
25 Spokane, WA 99201

26 Any written objection to the Settlement must contain your name, current address, telephone
number, and email address, as well as the substance of your objection(s). You may also
appear in person at the final hearing to be held as stated below in order to explain your
objection(s). You may hire an attorney at your own expense to represent you at this hearing
and to make objections to the Settlement.

Only Settlement Class Members who object to the proposed Settlement in accordance with
these procedures will be permitted to appeal or otherwise seek review of any decision by the
Court approving the proposed Settlement. Settlement Class Members who fail to present
objections to the proposed Settlement Agreement in the manner provided above shall be
deemed to have waived any such objections and shall be forever foreclosed from making any
objections (by appeal or otherwise) to the proposed Settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FINAL SETTLEMENT APPROVAL HEARING

On May 28, 2015, at 1:30 p.m., at the Pend Oreille County Superior Court in Newport, Washington, the Court will conduct a hearing (the “Final Settlement Approval Hearing”) to determine whether the proposed Settlement is fair, adequate and reasonable, and should be granted final approval. The date and time of the Final Settlement Approval Hearing is subject to change without further notice.

EXAMINATION OF COURT PAPERS AND INQUIRIES

The foregoing is only a summary of this lawsuit and the proposed Settlement and does not purport to be comprehensive. For more detailed information, interested persons should refer to the court records, including the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Pend Oreille County Superior Court in Newport, Washington, during regular business hours of each court day. All questions concerning the case or the proposed Settlement should be directed to Class Counsel at 1-800-809-2234, attention Sheila Cronan.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT PONDERAY, OR THE DEFENDANT’S ATTORNEYS WITH INQUIRIES.

Dated this 12th day of March, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REQUEST FOR EXCLUSION

Fairchild & Ackley v. Ponderay Newsprint Company, Case No. 14-2-00061-4

Name: _____

Address: _____

Telephone: _____

Email address: _____

I wish to be excluded from the Settlement Class in *Fairchild & Ackley v. Ponderay Newsprint Company*, Case No. 14-2-00061-4 (Pend Oreille Co. Superior Court).

Signature

In order to exclude yourself from the Settlement Class in this case, you must complete and mail this form, postmarked no later than April 14, 2015 to:

Martin S. Garfinkel & Adam J. Berger
Ponderay Class Action Settlement
Schroeter Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98104