

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHANNON CARLIN, an individual,)
HEATHER O'GREEN, an individual, for)
themselves on behalf of all Employees)
similarly situated, and as private attorney)
generals on behalf of the general public.)
)
Plaintiff,)
vs.)
)
NCS PEARSON, INC., a Minnesota)
corporation; and DOES 1 through 10,)
inclusive)
Defendants.)

Case No. 02-8857 RSWL (Mcx)
[Complaint Filed: November 19, 2002]

CLASS NOTICE (NATIONWIDE EXCLUDING CALIFORNIA)

NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT OF CLASS ACTION; NOTICE OF SETTLEMENT HEARING AND HEARING REGARDING APPLICATION FOR ATTORNEYS' FEES, COSTS, AND COMPENSATION TO NAMED CLASS REPRESENTATIVES; AND CLAIM, CONSENT, AND EXCLUSION PROCEDURES

Carlin et al. v. NCS Pearson, Inc., et al.
United States District Court, Central District of California
Case No. 02-8857 RSWL (Mcx)

TO: All current and former employees of NCS Pearson who were employed by NCS Pearson in the position of Staffing Specialist at any time from January 1, 2002 through January 31, 2003 (the "Class Period") and who were not residents of the State of California during their employment as Staffing Specialists.

* * * *

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS ARE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. NCS PEARSON'S RECORDS SHOW YOU MAY BE ENTITLED TO SHARE IN THE RECOVERY, BUT YOU MUST SUBMIT THE ATTACHED CLAIM FORM TO BE COMPENSATED. PLEASE FOLLOW THE SPECIFIED PROCEDURES WHICH FOLLOW.

I
INTRODUCTION

If you were employed by NCS Pearson at any time from January 1, 2002 through January 31, 2003 (the "Class Period") and were a resident of the District of Columbia or any U.S. state excluding California during your employment as a Staffing Specialist,¹ you are a member of the proposed settlement class in this class action lawsuit (the "Plaintiffs") and your rights will be affected as set forth in the proposed settlement described in this Notice (the "Settlement"). On June 9, 2003, the Court preliminarily approved the Settlement and conditionally certified a settlement class. You have received this Notice because NCS Pearson's records show you were employed by NCS Pearson as a Staffing Specialist

¹ Staffing Specialists who were residents of the State of California during their employment as Staffing Specialists may qualify as members of the California Residents Class. If you believe you qualify as a member of the California Residents Class, please immediately contact Wesley Nutten at (800) 322-2093 and reference the *Carlin v. NCS Pearson* litigation.

during the Class Period, and that you are a member of the proposed settlement class. Because your rights are affected by the legal proceedings, it is extremely important that you read this Notice carefully.

II.

NATURE OF THE ACTION AND CONTENTIONS OF THE PARTIES

On October 21, 2002, Shannon Carlin (“Carlin”) and Heather O’Green (“O’Green”) filed a class action complaint in the Superior Court for the State of California, County of Los Angeles. On November 19, 2002, NCS Pearson removed the complaint to the United States District Court, Central District of California. The Named Plaintiffs generally allege NCS Pearson misclassified the Plaintiffs as exempt from overtime under state law and under the Fair Labor Standards Act (“FLSA”), the federal law that regulates the payment of wages. Plaintiffs allege that these alleged practices also constituted unfair, unlawful or fraudulent business practices and unfair competition (collectively referred to as the “Claims”). NCS Pearson denies each of the claims and contentions alleged by Plaintiffs in the Action and denies that the Plaintiffs were harmed by the conduct alleged in the Action. The Named Plaintiffs and NCS Pearson, however, recognize the expense and length of continued proceedings necessary to continue the litigation through trial and through any possible appeals. The Named Plaintiffs and NCS Pearson have also taken into account the uncertainty and the risk of the outcome of further litigation, including the risk that the Court may or may not certify this case as a class action. Named Plaintiffs and NCS Pearson are also aware of the burdens of proof necessary to establish liability for the Claims, of NCS Pearson’s defenses thereto, and of the difficulties in establishing damages for the Plaintiffs. Named Plaintiffs and NCS Pearson also have taken into account the extensive settlement negotiations conducted by Named Plaintiffs and NCS Pearson.

Based on the foregoing, the Named Plaintiffs and Class Counsel believe the proposed Settlement is fair, adequate and reasonable and in the best interests of the Plaintiffs.

For purposes of the Settlement, the Court has certified a Class consisting of all current and former NCS Pearson employees who were employed by NCS Pearson as Staffing Specialists at any time from January 1, 2002 through January 31, 2003, inclusive, and who were not residents of the State of California during his or her employment as a Staffing Specialist.

Subsequent to the filing of this action, two other class actions alleging similar claims against NCS Pearson were filed, one in the Central District of California and one in the District of Minnesota. The other California action, *Green et al. v. NCS Pearson, Inc.*, Case No. 02-9460 RSWL (Mcx) (the “*Green Action*”) has been stayed pending the Settlement. A motion to stay the Minnesota action, *Kramer v. NCS Pearson, Inc.*, Case No. 03-CV-1166 JRT/FLN (the “*Kramer Action*”), is currently pending. If you opt into the Settlement by properly submitting the Claims Form/FLSA Consent Form at any time up to and including August 18, 2003, you will receive your Settlement Award within 14 days of August 18, 2003. If you file a Claim Form/FLSA Consent Form at anytime between August 18, 2003 and September 16, 2003 (the last possible day to submit your Form), you will receive your Settlement Award within 14 days of receipt of your Form by the Claims Administrator. By opting into the Settlement, you will not be able to pursue claims in either the *Green Action* or the *Kramer Action*. Neither the *Green Action* nor the *Kramer Action* has been settled by virtue of the Settlement, and it is impossible to predict the outcome of either action at this time.

III.

THE SETTLEMENT

The following is only a summary of the provisions of the proposed Settlement between the Named Plaintiffs, the Plaintiffs and NCS Pearson. The specific and complete terms of the proposed Settlement are described in the Stipulation and Settlement Agreement of Class Action Claims (“Settlement Agreement”), a copy of which is available for your review as set forth at the end of this Notice.

The Nationwide Settlement Fund has a maximum value of the total number of overtime hours worked by Plaintiffs in the Nationwide Class multiplied by \$17.50. The National Payout Fund is the National Settlement Fund less attorney's fees to counsel for the class (“Class Counsel”), defined below. Settlement Class Members will receive payments from the National Payout Fund based on the hours they worked as Staffing Specialists during the Class Period, regardless

of the physical location of their employment. Each Settlement Class Member's share of the National Payout Fund is referred to as that Settlement Class Member's "Gross Settlement Amount." Settlement Class Members will receive a Claim Form which indicates the amount of overtime and hours he or she worked during the Class Period, as reflected in NCS Pearson's records which have been reviewed and verified by Class Counsel. For this purpose, "overtime" is defined as time worked over 40 hours per week from January 1, 2002 to January 31, 2003. Each Settlement Class Member's Gross Settlement Amount will equal \$17.50 for each overtime hour he or she worked as a Staffing Specialist during the Class Period, less attorney's fees and costs as awarded by the Court. Settlement Class Members will receive the Gross Settlement Amount if they sign and return the Claim Form pursuant to the Claims Procedure set forth below.

From each Settlement Class Member's Gross Settlement Amount, payroll deductions will be made for state and federal withholding taxes and any other applicable payroll deductions owed by the Settlement Class Member as a result of the payment, resulting in a "Net Settlement Amount." The Net Settlement Amount that will be paid to each Settlement Class Member is the Settlement Class Member's "Settlement Award." If you file a Claim Form/FLSA Consent Form, at any time up to and including August 18, 2003, you will receive your Settlement Award within 14 days of August 18, 2003. If you file a Claim Form/FLSA Consent Form at anytime between August 18, 2003 and September 16, 2003 (the last possible day to submit your Form), you will receive your Settlement Award within 14 days of receipt of your Form by the Claims Administrator.

IV.

CLAIM PROCEDURE FOR MONETARY RECOVERY/FLSA CONSENT PROCEDURE

A. The Settlement of this Action includes claims under both state law and federal law. Only Nationwide Class Plaintiffs who complete, sign and return the enclosed Claim Form/FLSA Consent Form will become Settlement Class Members and receive payment for overtime hours worked. Federal law provides that Plaintiffs will not be bound by the Settlement of this action unless they complete the enclosed Claim Form/FLSA Consent Form. This means that when you complete, sign and return the Claim Form/FLSA Consent Form you are consenting to join the federal action and to be represented by the Named Plaintiffs and their counsel. By joining the federal action, you are also waiving any claims you may have in any state jurisdiction. You therefore have two options:

- **IF YOU WISH TO RECEIVE A SETTLEMENT AWARD, YOU MUST COMPLETE, SIGN AND RETURN THE CLAIM FORM/FLSA CONSENT FORM AS OUTLINED BELOW IN SUBSECTION B. THIS WILL INDICATE YOUR CONSENT TO JOIN THE FLSA AND STATE LAW PORTION OF THE ACTION. YOU WILL BE BOUND BY THE SETTLEMENT AS TO BOTH YOUR STATE AND FEDERAL CLAIMS.**
- **IF YOU DO NOT RETURN THE CLAIM FORM/FLSA CONSENT FORM OR REQUEST EXCLUSION, YOU WILL NOT BE BOUND BY THE SETTLEMENT AS TO YOUR STATE OR FEDERAL CLAIMS, AND YOU WILL NOT RECEIVE A SETTLEMENT AWARD.**

B. As a Class Member, if you wish to receive a recovery and consent to join the FLSA action, you must complete, sign and return in a proper and timely fashion the Claim Form/FLSA Consent Form to:

Desmond, Marcello & Amster
("Claims Administrator")
6060 Center Drive, Suite 825
Los Angeles, CA 90045
Facsimile no.: (310) 216-0800

Via First-Class U.S. mail or equivalent, postage paid, postmarked on or before September 16, 2003. A copy of your Claim Form is attached. (If you need an extra copy, contact the Claims Administrator or Class Counsel.) If any information provided on the Claim Form is incorrect, please call Wesley Nutten at (800) 322-2093 and state that you are calling regarding the *Carlin v. NCS Pearson, et al.* litigation. Also, please provide your telephone number and any other indicated information referred to on your Claim Form if it is not provided. If you wish to have confirmation that your

Claim Form has been received by the Claims Administrator, you may do so by sending it by certified U.S. mail with a return-receipt request. Any Claim Form/FLSA Consent Form that is not submitted by First-Class mail or equivalent, is postmarked after the applicable date, is not completely and legibly filled out, is not addressed to the proper address, or is not signed by the Class Member, will not be considered a valid claim and will be denied unless otherwise ordered by the Court. You may also e-mail Mr. Nutten at: claims.ncsp@dmaclassaction.com.

C. Alternatively, a Class Member may fax (fax no.: (310) 216-0800) or hand-deliver their Claim Form to the Claims Administrator listed above by no later than close of business on September 16, 2003.

D. The Claims Administrator shall review each Claim Form/FLSA Consent Form received and shall verify each form to reasonably ensure its validity and accuracy as may be reasonably necessary.

E. Each Class Member who submits a valid Claim Form/FLSA Consent Form shall be paid by check. The checks shall remain valid and negotiable for one hundred eighty (180) days from issuance and will thereafter automatically be canceled if not cashed.

V.

CLASS COUNSEL'S FEES AWARD, NAMED PLAINTIFFS' INCENTIVE AWARD AND CLAIMS ADMINISTRATION EXPENSES

A. As part of the preliminary approval of the Nationwide portion of the Settlement, the Court has preliminarily approved a Stipulation among all parties that Arias, Ozzello & Gignac, LLP ("Class Counsel") will seek an award of attorneys' fees in an amount not to exceed ten percent (10%) of the Nationwide Fund (the "Fees Award"). Class Counsel shall not be permitted to apply to the Court for any additional payments for fees or interest and the award if entered, shall be for all claims for attorneys' fees past, present, and future incurred in representing the Nationwide (Excluding California) claimants in this Action. The Fees Award shall be paid out of the Nationwide (Excluding California) Payout Fund. As part of the Settlement, you will not be required to pay Class Counsel any additional fees for their representation of you in the Action.

B. Also as part of the preliminary approval of the Nationwide (Excluding California) portion of the Settlement, the Court has preliminarily approved a Stipulation among the parties that Class Counsel will seek an award of \$2,500 on account of litigation costs advanced, and to be advanced, on behalf of the Class. These litigation costs shall be paid out of the Nationwide Payout Fund. As part of the Settlement, you will not be required to pay Class Counsel any additional costs for their representation of you in the Action.

C. Also as part of the preliminary approval of the Settlement, the Court has preliminarily approved a Stipulation among the parties that the two named Plaintiffs representing the Plaintiffs will seek an order for Incentive Awards not to exceed the amounts as follows: \$5,000 to Carlin and \$5,000 to O'Green. These Incentive Awards shall be paid by NCS Pearson and shall not be paid out of the Nationwide Settlement Fund and not out of the Nationwide Payout Fund; for administrative purposes, the Incentive Awards shall be paid in the form of a check from NCS Pearson.

D. Also as part of the preliminary approval of the Settlement, the Court has preliminarily approved a Stipulation among the parties that Claims Administration expenses shall be paid by NCS Pearson and shall not be paid out of the Nationwide Settlement Fund and not out of the Nationwide Payout Fund.

VI.

BINDING EFFECT/RELEASE OF CLAIMS

Release of Claims Affecting All Nationwide Class Settlement Class Members.

All Nationwide Class Members who timely submit their Claim Form/FLSA Consent Form become Settlement Class Members and are bound by the terms of the proposed Settlement with regard to their state law and FLSA claims as of the date he or she receives the Settlement Amount based upon the submission of a timely and valid Claim Forms/FLSA

Consent Form. This Release affects Settlement Class Members who receive a Settlement Amount and shall remain valid even if the Settlement is rendered void for any reason. Settlement Class Members release the "Released Parties" from the "Released Claims" as defined in the Settlement Agreement and will be permanently barred from suing or otherwise making a Released Claim against any of the Released Parties. The Released Parties include, but are not limited to, NCS Pearson and its past or present officers, directors, shareholders, employees, affiliates, attorneys, and related entities. The "Released Claims" are defined in the Settlement Agreement and include all claims, demands, rights, liabilities, and causes of action, known or unknown, for violation of any state or federal wage and hour laws including the Fair Labor Standards Act and the California Wage Orders of any state or district within the United States in which any Class Member resided during the Class Period or which would be applicable to any Class Member's Wage and Overtime Claims during employment with NCS Pearson during the Class Period, whether for economic damages, non-economic damages, restitution, penalties, liquidated damages, or interest, arising out of, relating to, or in connection with his or her employment with NCS Pearson as a Staffing Specialist, including without limitation claims (a) that NCS Pearson did not pay the Plaintiffs all overtime they were owed for work performed by Plaintiffs for NCS Pearson as a Staffing Specialist; (b) that NCS Pearson failed to provide unpaid meal periods and paid rest breaks to the Plaintiffs while employed as a Staffing Specialist; and/or (c) that NCS Pearson owes wages, penalties, interest, attorneys' fees or other damages of any kind based on a failure to fully compensate the Plaintiffs for all hours worked at any time on or before the last day of the Class Period while working for NCS Pearson as a Staffing Specialist (whether based on contract, the California Wage Orders, the wage and hour laws of any state or district within the United States in which any Class Member resided during the Class Period or which would be applicable to any Class Member's employment as a Staffing Specialist with NCS Pearson during the Class Period, or otherwise); and all causes of action asserted in the Class Action as they relate to the Staffing Specialist position.

In addition to releasing the Released Parties from the Released Claims as outlined above, Settlement Class Members release the Released Parties from the "Released Federal Claims" as defined in the Settlement Agreement. This Release affects Settlement Class Members who receive a Settlement Amount and shall remain valid even if the Settlement is rendered void for any reason. The "Released Federal Claims" include all claims, demands, rights, liabilities, and causes of action, known or unknown, for violation of any state or federal wage and hour laws, including the Fair Labor Standards Act and the California Wage Orders whether for economic damages, non-economic damages, restitution, penalties, liquidated damages, or interest, arising out of, relating to, or in connection with his or her employment with NCS Pearson as a Staffing Specialist, including without limitation claims (a) that NCS Pearson did not pay the Plaintiffs all overtime they were owed for work performed by Plaintiffs for NCS Pearson as a Staffing Specialist and/or (b) that NCS Pearson owes wages, penalties, interest, attorneys' fees or other damages of any kind based on the Fair Labor Standards Act or any other federal law, statute, or constitutional provision while you were employed as a Staffing Specialist; and all causes of action asserted in the Class Action as they relate to the Staffing Specialist position.

VII.
PROCEDURE FOR EXCLUSION

Nationwide Class Plaintiffs who do not wish to participate in this Settlement do not need to request exclusion. Failure to file a timely Claim Form will effectively exclude Nationwide Class members from the Settlement.

VIII.
SETTLEMENT HEARING/OBJECTIONS TO THE PROPOSED SETTLEMENT

A hearing (the "Settlement Hearing") will be held before the Honorable Ronald S.W. Lew on August 18, 2003, in Courtroom 21, Fifth Floor, at 9:00 a.m. at the U.S.D.C., Central District of California, located at 312 North Spring Street, Los Angeles, California 90012 (the "Court"), to determine whether the proposed Settlement of the Action is fair, adequate and reasonable and should be approved by the Court and whether the Action should be dismissed on the merits with prejudice. The hearing may be adjourned by the Court from time to time as the Court may without further notice direct.

Any Class Member may appear in person or through counsel at the Settlement Hearing and be heard as to why the proposed Settlement of the Action should not be approved as fair, adequate and reasonable, or why a Final Judgment dismissing the Action against NCS Pearson with prejudice should or should not be entered. No Class Member, however, shall be heard or entitled to object and no papers or briefs submitted by any such person shall be received or considered by

the Court unless written notice of intention to appear at the Settlement Hearing, together with copies of all papers and briefs proposed to be submitted to the Court at the Settlement Hearing, shall have been filed with the Court and have been served personally on or before August 4, 2003, or if by mail then postmarked no later than August 4, 2003, upon all of the following:

Mike Arias
Mark A. Ozzello
Arias, Ozzello & Gignac LLP
6701 Center Drive West, Suite 950
Los Angeles, CA 90045-1553

Douglas R. Hart
Travis M. Gemoets
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071

Any member of the Settlement Class who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

Any Class Member who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

IX.
EXAMINATION OF PAPERS AND INQUIRIES

The foregoing is only a summary of the Action and of the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and Settlement Agreement of Class Action Claims, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court, Central District of California, 312 North Spring St., Los Angeles, CA 90012 during regular business hours of each Court day. You may also inspect said documents at the offices of Counsel for the Settlement Class.

All inquiries by Plaintiffs regarding this Notice and/or the Settlement should be directed to counsel for the Settlement Class:

Arias, Ozzello & Gignac LLP
c/o Regina Macleod, Legal Administrator
6701 Center Drive West, Suite 950
Los Angeles, CA 90045-1553
Telephone no.: (310) 670-1600
Website: www.aogllp.com
E-mail: rmacleod@aogllp.com

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, NCS PEARSON, OR NCS PEARSON'S ATTORNEYS WITH INQUIRIES.

Dated: June 16, 2003

s/ Ronald S. W. Lew
BY ORDER OF THE COURT
HON. RONALD S. W. LEW
UNITED STATES DISTRICT COURT JUDGE