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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13
14 NOEMEE GABISAN, an individual,
CAROLE WILSON-MCGHEE, an
15 individual, on behalf of themselves, and on
behalf of all persons similarly situated,

16
17 Plaintiff,

18 vs.

19 PELICAN PRODUCTS, INC.; and, Does 1 to
20 10,

21 Defendants.
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CASE No. 08 CV 1361 MMA (NLS)

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT,
APPROVING NOTICE AND SETTING
FINAL APPROVAL HEARING DATE**

Hearing Date: January 9, 2009
Hearing Time: 2:30 p.m.

Judge: Hon. Michael M. Anello
Dept.: Courtroom 5, 3rd Flr

1 WHEREAS, the Court has reviewed the Stipulation of Settlement (“Settlement Agreement”)
2 that has been entered by and between Plaintiffs Noemee Gabisan and Carole Wilson-McGhee
3 (“Plaintiffs”) and Defendant Pelican Products, Inc. (“Defendant”) on November 14 2008, and,

4 WHEREAS, the Court has reviewed the papers submitted in support of the named Plaintiffs’
5 motion for preliminary approval of settlement and certification of settlement class as well for
6 appointment of class counsel, see Doc. No. 19, and concludes that this matter is appropriate for
7 resolution in the papers pursuant to the Court’s discretion under Local Civil Rule 7.1(d)(1),

8 IT IS HEREBY ORDERED as follows:

9 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
10 Agreement lodged as an exhibit to Plaintiffs’ motion, which Agreement is incorporated by
11 reference herein.

12 Conditional Certification of Settlement Class

13 2. The Court provisionally certifies for settlement purposes only the class defined as:
14 all persons employed by Pelican in the Sales Support Specialist position in the State of California
15 during the period July 24, 2004 through the date of this order. In provisionally certifying the class
16 for settlement purposes, the Court finds that all of the requirements for class certification as set
17 forth in fed. R. Civ. P. 23 are satisfied based upon the allegations of the complaint and the evidence
18 provided to the Court, subject to further consideration at the Final Approval Hearing after
19 distribution of notice to the members of the settlement class as set forth below. In the event the
20 proposed settlement is not consummated for any reason, the conditional certification set forth in this
21 paragraph shall be of no further force or effect.

22 Appointment of Class Counsel

23 3. The Court concludes that the law firms of Blumenthal & Nordrehaug and Norman B.
24 Blumenthal, Kyle Nordrehaug and Aparajit Bhowmik of that firm, as well as the United Employees
25 Law Group and Walter Haines of that firm, have fairly and adequately represented the interests of
26 the class, will continue to do so and therefore pursuant to Federal Rule of Civil Procedure 23(g)(1),
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1 are hereby appointed class counsel for purposes of representing the Settlement Class conditionally
2 certified in this Order..

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Preliminary Approval of Settlement

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Notice to Class Members

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4. The Court preliminarily approves the provisions of the Agreement as being fair, just, reasonable and adequate to the members of the Settlement Class, subject to further consideration at the Final Approval Hearing after distribution of notice to the members of the Settlement Class as provided in paragraph 5 of this Order.

5. Within ten (10) days of the entry of this Order, or by January 22, 2009, a Notice of Class Action Settlement and Final Approval Hearing (“Notice”), in the form attached to the Settlement Agreement as Exhibit 1, with the Claim Form in the form attached to the Settlement Agreement as Exhibit 2, shall be sent by the Claims Administrator to all members of the Settlement Class defined above. The Claims Administrator is Gilardi & Co.

6. The Court concludes that the Notice to be provided as set forth in this Order constitutes the best means practicable of providing notice under the circumstances and meets the requirements of Fed. R. Civ. P. 23 and due process under the United States Constitution and any other applicable law, and when completed shall constitute sufficient notice of the settlement, the Final Approval Hearing, and the right to be excluded from the settlement to all persons entitled to participate in the settlement in accordance with Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(1)(B).

7. Any member of the class who desires to opt out of this class action must postmark his or her notification of such intent, pursuant to instructions in the Notice, no later than 45 days from the date of mailing the Notice. As stated in the Notice, the settlement process will be administered by Gilardi & Co., a company that provides settlement and claims administration services. Except to state an intention to appear that the Final Approval Hearing or to comment on, object to or support the proposed settlement, no members of the Settlement Class should submit any

1 documents to the Court.

2 The Final Approval Hearing

3 8. The Final Approval Hearing is hereby scheduled to be held before this Court on
4 April 17, 2009, at 2:30 p.m. in courtroom 5 to consider the fairness, reasonableness, and adequacy
5 of the proposed settlement, Plaintiffs' request for the award of attorneys' fees and costs, the
6 dismissal with prejudice of the class action with respect to Defendant, and the entry of the final
7 judgment in this action. The Court orders that the date and time of the Final Approval Hearing
8 shall be set forth in the Notice to be mailed to members of the Settlement Class.

9 9. All papers supporting final approval of the Agreement shall be filed with the Clerk
10 of the Court and served upon class counsel and defendant's counsel by March 25, 2009.

11 10. Any Class Member may, but need not, submit comments or objections to the
12 Agreement. All such comments and/or objections must be in writing and must be filed with the
13 Clerk of the Court and served upon class counsel and defendant's counsel no later than March 12,
14 2009 [45 days from the date the Notice is mailed].

15 11. Any member of the Settlement Class who might object to the proposed settlement
16 shall have a right to appear (through his or her own attorney or without an attorney) and be heard at
17 the Final Approval Hearing. Class Members wishing to be heard at the Final Approval Hearing
18 must file written comments or objections in accordance with the above paragraph and must indicate
19 in such comments/objections that the Class members intends to appear at the hearing.

20 12. The Court may, for good cause, extend any of the deadlines set forth in this Order
21 without further notice to members of the Settlement Class. The Court also may adjourn or continue
22 the Final Approval Hearing without further notice to members of the settlement class.


23 Notice to Governmental Agencies

24 13. Within ten (10) days after entry of this Order, Defendant shall cause a notice of the
25 proposed settlement to be served upon the appropriate state official of each state in which a Class
26 Member resides and the appropriate federal official. The notice to governmental agencies shall
27 include of the documents and information, as is required by 28 U.S.C. section 1715(b), which

1 consists of (1) a copy of the complaint and any materials filed with the complaint and any amended
2 complaints, (2) notice of any scheduled judicial hearing in the class action, (3) the proposed
3 notification to class members of exclusion rights and the proposed settlement, (4) the proposed
4 class action settlement, (5) any settlement or other agreement contemporaneously made between the
5 Parties' attorneys, (6) any final judgment or notice of dismissal, (7) the names of class members
6 who reside in each state and the estimated proportionate share of the claims of such members to the
7 entire settlement to that state's appropriate official (if feasible), or a reasonable estimate of the
8 number of class members residing in each state and the estimated proportionate share of the claims
9 of such members to the entire settlement, and (8) any written judicial opinion relating to the
10 materials described in items (1) through (7).

11 **IT IS SO ORDERED.**

12 DATED: January 9, 2009

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14 Hon. Michael M. Anello
15 United States District Judge

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