

**NOTICE OF PENDENCY OF CLASS AND  
COLLECTIVE ACTION, PROPOSED SETTLEMENT  
AND HEARING DATE FOR COURT APPROVAL**

**Noemee Gabisan, Carole Wilson-McGhee, et al. v. Pelican  
Products, Inc. et al.**

**United States District Court for the Southern District of  
California, Case No. 08 CV 1361 JM NLS**

**PLEASE READ THIS NOTICE CAREFULLY.**

**TO: Current and former employees of Pelican Products, Inc. who worked as a  
Sales Support Specialists from July 28, 2004 to \_\_\_\_\_ (date of  
preliminary approval)**

**THIS NOTICE IS TO INFORM YOU OF A PENDING CLASS AND COLLECTIVE  
ACTION AND A PROPOSED SETTLEMENT OF THE CLASS AND COLLECTIVE  
ACTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR  
RIGHTS AS A POTENTIAL SETTLEMENT CLASS MEMBER CONCERNING THE  
SETTLEMENT.**

**AS EXPLAINED IN MORE DETAIL BELOW, TO RECEIVE A PORTION OF THE  
SETTLEMENT, YOU MUST MAIL IN A CLAIM FORM TO THE CLAIMS  
ADMINISTRATOR BY \_\_\_\_\_, 2009. THE CLAIM FORM IS ENCLOSED.**

**IF YOU FAIL TO RETURN A TIMELY AND VALID CLAIM FORM, YOU WILL  
RECEIVE NO PORTION OF THE SETTLEMENT, AND UNLESS YOU OPT OUT,  
YOU WILL STILL BE BOUND BY THE RELEASE OF CLAIMS AND DISMISSAL  
DESCRIBED IN THIS NOTICE.**

Pursuant to an Order of the United State District Court for the Southern District of California (the "Court"), a proposed settlement (the "Settlement") has been reached in the lawsuit entitled, *Gabisan v. Pelican Products, Inc.*, Case No. CV 1361 JM NLS (the "Litigation"), seeking monetary compensation for persons who performed work as a Sales Support Specialist at Pelican Products, Inc. If approved by the Court, the Settlement will provide payments to class members and will result in the dismissal of the Litigation with prejudice and the release by class members of the claims described below.

This Notice has been authorized by the Court. This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted. This Notice is to advise you of the proposed settlement and your rights in connection with it.

**A. PURPOSE OF THIS NOTICE**

The Court has certified, for settlement purposes, a Class defined as the following: all natural persons who worked for Pelican in the Sales Support Specialist (“Specialist”) position in the state of California between July 28, 2004 and \_\_\_\_\_ (date of preliminary approval).

According to Pelican’s records, you are a member of the Class. The purpose of this Notice is to inform you about the Action and the proposed Settlement, to instruct you as to the process for participating in the Litigation, and to discuss your rights and options with respect to the Litigation and the Settlement.

**B. DESCRIPTION OF THE LITIGATION**

The Litigation was filed on July 28, 2008. Plaintiffs contend that the class of Sales Support Specialists (“Specialists”) at Pelican did not receive proper or accurate wage-itemization statements (i.e. pay stubs). Plaintiffs further contend that Specialists were not properly compensated in accordance with the FLSA and the wage-and-hour laws of the state of California. Plaintiffs specifically contend that Specialists were not paid for overtime wages or waiting-time penalties, that they were not provided appropriate meal and rest breaks, and that Pelican engaged in unfair practices in violation of California’s Unfair Competition Law, California Business and Professions Code § 17200. Pelican denies these claims and contends that it complied with all applicable requirements. All parties recognize, however, the risks, expenses, and disruption that are associated with continued litigation, and they have therefore chosen to resolve their differences by entering into this proposed Settlement.

This Settlement is the result of arms-length negotiations between Plaintiffs’ attorneys and Defendants’ attorneys. The negotiations were supervised by a neutral mediator. Both sides agree that, in light of the risks and expenses of continued litigation, this Settlement is fair and appropriate under the circumstances. Please be advised that the Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

On \_\_\_\_\_, 2008, the Court granted preliminary approval of the proposed Settlement. The Court will decide whether to give final approval to the proposed Settlement at a hearing scheduled for \_\_\_\_\_, 2009, at \_\_\_\_\_. See Paragraph H for details.

The hearing for final approval, at which all timely filed objections to the Settlement will be heard and ruled upon by the Court, will take place before:

**The Honorable Michael M. Anello  
United States District Court - Southern District of California  
880 Front Street, Courtroom 5  
San Diego, CA 92101-8900**

The attorneys representing the Class ("Class Counsel") are:

**Blumenthal and Nordrehaug**  
**2255 Calle Clara**  
**La Jolla, CA 92037**  
**Telephone: (858) 551-1223**  
**Facsimile: (858) 551-1232**  
**Email: AJ@bamlawlj.com**

The attorneys representing Defendant Pelican Products, Inc. are:

**Linda S. Goldman**  
**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
**633 West 5<sup>th</sup> St., 53<sup>rd</sup> Floor**  
**Los Angeles, CA 90017**

**C. SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT**

Subject to Court approval, the terms of the Settlement are as follows:

1. Defendant will establish a Gross Fund of \$285,000.00 to be administered by the Claims Administrator (\$127,348 of which already has been paid to Specialists currently employed at Pelican, and \$157,652 of which remains to be paid by Defendant). The following amounts will be subtracted from the Gross Fund: (a) a payment for Class Counsel's reasonable attorney's fees and costs not to exceed 25 % of the Gross Fund (i.e. \$71,250) as determined by the Court, and (b) Plaintiffs' enhancement award of a maximum of \$3750 each (i.e. \$7500 total for the two Named Plaintiffs), and (c) the costs of administering the Settlement not to exceed \$5000, and (d) payment to California's Labor Workforce Development Agency on account of the claims asserted under California Labor Code section 2699 of \$15,225, and (e) \$127,348 Pelican already paid. The amount of the Gross Fund after (a) through (e) are subtracted is the Net Fund. The amount of the Net Fund to be allocated among the thirty-six current and former Specialists based on the factors set for in paragraph 2, provided the Court awards the full amount of attorneys' fees and incentive payment requested, will be \$58,677.
2. Each member of the Class who submits a timely Claim, Consent and Release Form (the "Claim Form") shall be eligible for a portion of the Net Settlement Fund. The amount paid to each Class Member who submits a timely Claim Form will be determined based on multiple factors, including but not limited to the following: number of valid and timely Forms filed by Specialists; records of hours works in

Kronos; amounts already paid to the particular Specialist; other factors deemed appropriate by the Court and parties. The defendant shall be responsible for the calculation and payment of the employer's share of payroll taxes. The settlement administrator will issue IRS Forms W-2 and 1099 to each Class Member reflecting the payment. First, all current Specialists (other than Gabisan and Wilson-McGhee) already have been allocated and paid an amount determined in accordance with their Kronos time records and their salary rates to release overtime claims. Provided they submit claim forms, Gabisan and Wilson-McGhee will be allocated \$3756.50 and \$3626 respectively for alleged overtime, which amounts were calculated in the same manner as other current Specialists. Second, like the current Specialists, the Claims Administrator will allocate overtime amounts for former Specialists who are Claimants and have not yet been paid any amounts based on their hours worked recorded in Pelican's Kronos time system and their salary (which the Parties estimate, assuming all former Specialists are Claimants, will be less than \$20,000). Third, all Specialists who are Claimants (whether current or former Specialists) will receive an additional allocation of \$250 for all claims released. Finally, after items 1 through 3 are allocated, the Claims Administrator will allocate the remainder of the Net Fund (if any) by calculating the percentage of overtime hours recorded in Kronos for the Claimant by the total overtime hours worked by all Claimants, and allocating the applicable percentage of the remainder to each Claimant.

3. Each member of the Class who does not exclude himself or herself from the Settlement will be bound by the Judgment and deemed to have released all claims as follows: those claims, known and unknown, for any failure to compensate for overtime and any failure to provide a pay stub and for any failure to make meal and rest period payments, under California or other state law statute, ordinance, regulation, or common law, whether or not such claims are in the nature of back pay, damages, penalties, interest, attorneys' fees and/or injunctive relief, whether in contract, tort, or pursuant to a statutory remedy for claims that were brought for unpaid wages and penalties under state law or that arise out of the same fact allegations in the Complaint or First Amended Complaint, arising from each Class member's work as a Specialist. The release of claims shall accrue from July 28, 2004 until \_\_\_\_\_ (the date that preliminary approval of the Settlement is granted).
4. If the Court gives its final approval to the proposed Settlement, the Court will enter a Judgment dismissing the Litigation with prejudice.

**D. TO RECEIVE A SETTLEMENT PAYMENT AS A CLAIMANT**

In order to receive a payment as a Claimant, you must complete, sign, and mail the

enclosed Claim, Consent and Release Form to the Claims Administrator at the address listed below. **Your Claim Form must be postmarked no later than \_\_\_\_\_, 2009. Late or incomplete Claim Forms will not be honored.**

The Settlement Administrator is:

**Gilardi & Co.  
P.O. Box 1110  
Corte Madera, CA 94976-1110  
  
Tel: (866)780-1744**

**E. TO REQUEST EXCLUSION FROM THE SETTLEMENT**

If you want to be excluded from this Settlement, you must complete and mail a written request for exclusion to the Settlement Administrator at the address listed above. In order to be valid, your request for exclusion must be postmarked no later than \_\_\_\_\_, 2009, and it must provide your name, address, telephone number, and Social Security number; it must clearly state that you are requesting exclusion from the Settlement in the case entitled *Gabisan v. Pelican Products, Inc.*, Case No. CV 1361 JM NLS (filed July 28, 2008); and it must be signed by you personally or by your attorney if you are represented by counsel. If you request exclusion from this Settlement, you will receive no portion of the Settlement Payment.

If you submit a timely and valid request for exclusion, you will not be eligible to receive any of the benefits of the Settlement. You will, however, retain whatever rights you may have against Pelican arising out of the claims referred to above.

You will be permitted to withdraw or rescind your request for exclusion by submitting a "rescission of opt-out statement" to the Claims Administrator, which will include the following language: "I previously submitted an opt-out statement seeking exclusion from the settlement. I have reconsidered and wish to withdraw my opt-out statement. I understand that by rescinding my opt-out I may be eligible to receive an award from the Settlement and may not bring a separate legal action against Defendant with respect to any Released Claims." If you wish to submit a rescission statement, you must do so not later than \_\_\_\_\_, 2009. You also must submit a Claim Form to be eligible to receive any portion of an award from the Settlement.

**F. TO OBJECT TO THE SETTLEMENT**

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, the provision for the payment of attorneys' fees and litigation costs, or

any other aspect of the Settlement, either personally or through an attorney, by filing a written objection with the Court and mailing a copy of your written objection to Counsel for the Parties and the Settlement Administrator at their respective addresses listed above.

All objections must be signed and set forth your address, telephone number, date of birth, and the name of the case (*Gabisan v. Pelican Products, Inc.*, Case No. CV 1361 JM NLS (filed July 28, 2008)). All objections must be filed with the Court AND postmarked to the Settlement Administrator no later than \_\_\_\_\_, 2009. If you submit a timely objection, you may appear, either personally or through an attorney, at your own expense, at the final approval hearing, discussed below. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the final approval hearing. At the hearing, the Court will consider and rule upon all timely objections.

Any member of the Class who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the claims process, and any and all other aspects of the Settlement. If the Settlement is not approved by the Court, the Litigation will continue to be prepared for trial or other judicial resolution.

#### **G. IF YOU DO NOTHING**

If you do nothing in response to this Notice, you will not receive any proceeds as a Claimant. However, if you do nothing in response to this Notice, you will be bound by the Judgment and deemed to have released all claims as follows: those claims, known and unknown, for any failure to compensate for overtime and any failure to provide a pay stub and for any failure to make meal and rest period payments, under California or other state law statute, ordinance, regulation, or common law, whether or not such claims are in the nature of back pay, damages, penalties, interest, attorneys' fees and/or injunctive relief, whether in contract, tort, or pursuant to a statutory remedy for any claims that were brought for unpaid wages and penalties under state law, or that arise out of the same fact allegations in the Complaint or First Amended Complaint, arising from each Class member's work as a Specialist. The release of claims shall accrue from July 28, 2004 until \_\_\_\_\_ (the date that preliminary approval of the Settlement is granted).

#### **H. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT**

The Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorney's fees and costs, and the administrative costs, will be held on \_\_\_\_\_, 2009, at \_\_\_\_\_.m. before the Honorable Michael M. Anello, located at the address listed above. At the Final Approval Hearing, the

Court will consider and rule upon all timely objections. The Final Approval Hearing may be continued without further notice.

**I. ADDITIONAL INFORMATION**

This Notice only summarizes the Litigation, the Settlement, and other related matters. For more information, you may contact Class Counsel at the address and telephone number set forth above. If your address changes, or is different from the one on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

**J. NO RETALIATION**

Applicable law prohibits Pelican from discharging or in any other manner discriminating against you because you participate in this case, or have in any other way exercised your rights under the Fair Labor Standards Act or California state wage and hour law.

**K. REMINDER AS TO TIME LIMITS**

If you wish to submit a claim, you must complete and return the enclosed Claim, Consent and Release Form to the Claims Administrator. Your Claim Form must be postmarked on or before \_\_\_\_\_, 2009.

**PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.**