

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

**NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION, SETTLEMENT HEARING,  
AND EXCLUSION AND OBJECTION PROCEDURES**

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*The San Bernardino County California Superior Court authorized this Notice.  
This is not a solicitation from a lawyer.*

The Court has given preliminary approval to a Settlement of this lawsuit. You should read this Notice carefully because it will affect your rights if you were employed by Gate City Beverage Distributors and/or Prestige I (hereinafter "GATE CITY") at any time as:

- A. A SALARIED SALES REPRESENTATIVE BETWEEN SEPTEMBER 25, 2002 AND JANUARY 1, 2005;
- B. AN HOURLY SALES REPRESENTATIVE BETWEEN JANUARY 2, 2005 AND MARCH 2, 2007;
- C. AN HOURLY MERCHANDISER BETWEEN SEPTEMBER 25, 2002 AND MARCH 2, 2007; AND/OR
- D. AN HOURLY TRUCK/DELIVERY DRIVER BETWEEN MARCH 2, 2003 AND MARCH 2, 2007.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHT TO MAKE A CLAIM FOR PAYMENT OR TO ELECT NOT TO BE INCLUDED IN THE CLASS AS FURTHER DESCRIBED BELOW.

You have received this notice because Gate City's records indicate that you worked in one or more of the above mentioned positions for Gate City in California within the applicable time periods. This notice is designed to advise you of how you can participate in this settlement and how you can be excluded from the settlement.

**I. BACKGROUND OF THE CLASS ACTION**

Gary Owen, Michael Peru, William Jay Van Vleet and Daniel Rodriguez ("Plaintiffs") filed class action lawsuits on behalf of themselves and a proposed Class of fellow salaried sales representatives and hourly sales representatives, merchandisers, and truck/delivery drivers of Gate City Beverage/Prestige I. In these lawsuits, it is alleged that Plaintiffs and the other Class Members (defined in A-D, above) were not paid for all hours worked, were not provided uninterrupted off-duty meal periods of at least 30 consecutive minutes when they worked shifts of six or more hours, had one half hour of time automatically deducted by Gate City each day from the total hours worked regardless of whether or not 30 consecutive minutes of off-duty meal period time was actually taken and were not authorized and permitted to take uninterrupted off-duty rest periods of at least 10 consecutive minutes when they worked shifts of three and one half hours or longer.

Plaintiffs assert that they and other hourly Sales Representatives, Merchandisers and Truck/Delivery Drivers are entitled to back wages, improper wage deductions, interest, penalties, and other relief provided by law.

As to the claims on behalf of the Salaried Sales Representatives, it is also claimed that Gate City misclassified those employees as "exempt" from California's overtime laws and failed to pay overtime wages owed under California law.

Gate City disputes Plaintiffs' claims, including Plaintiffs' claims that the conduct alleged in Plaintiffs' Complaint ever occurred.

**II. THE CLASS**

On September 23, 2009, the Court certified the claims as a class action, designating Plaintiffs Gary Owen, William Van Vleet and Daniel Rodriguez, to be representatives of the Class, and designating Righetti Law Firm, P.C. and Magaña, Cathcart & McCarthy to serve as Class Counsel to represent the class.

The Class is defined as follows:

1. All California employees who held the position of hourly Merchandiser while employed by GATE CITY/PRESTIGE I Beverage Distributors during the period of time September 25, 2002 to the time Gate City sold their operation to Harbor Distributors (approximately March 2, 2007).
2. All California employees who held the position of hourly Truck/Delivery Driver while employed by GATE CITY/PRESTIGE I during the period of time March 2, 2003 to the time Gate City sold their operation to Harbor Distributors (approximately March 2, 2007).

3. All California employees who held the position of hourly Sales Representative while employed by GATE CITY/PRESTIGE I during the period of time January 2 2005 to the time Gate City sold their operation to Harbor Distributors (approximately March 2, 2007).
4. All California employees who held the position of Salaried Sales Representative while employed by GATE CITY/PRESTIGE I during the period of time from September 25, 2002 to January 1, 2005.

The Parties have conducted an extensive investigation of the facts and law including, *inter alia*, the exchange of information through formal discovery. Discovery exchanged in this Action included the following: 1) both informal and formal written discovery; 2) depositions of Named Plaintiffs; 3) depositions of the supervisors of Named Plaintiff; 4) depositions of a Persons Most Knowledgeable of GATE CITY/PRESTIGE I (“PMK”) on many issues; 5) depositions of multiple witnesses; 6) interviews with various Plaintiffs and many Class Members, including retention of multiple experts and completion of a survey of Class Members; 7) numerous meetings between representatives of the Parties; 8) four mediation conferences; and 9) discovery motions, class certification motions, and orders. Counsel for the Parties have further invested extensive time investigating the applicable law, which is constantly evolving, as it relates to the Plaintiffs’ claims and damages, the defenses thereto, and facts discovered. Furthermore, the parties participated in extensive settlement discussions, including four full day mediation conferences before multiple widely respected mediators, who included two former superior court judges and an attorney, all of whom are well versed in claims such as those here presented. At the conclusion of the fourth mediation, the parties reached a settlement.

The parties have since entered into a Joint Stipulation of Settlement, which has been given preliminary approval by the Court. The Settlement Class consists of the class certified by the Court, as outlined above.

If you are part of the Settlement Class as defined above, you may have the opportunity to participate in the settlement.

<b>Your Legal Rights and Options in this Settlement</b>	
DO NOTHING	Receive no payment. Release certain claims.
EXCLUDE YOURSELF	Submit an Exclusion request, receive no money and retain your rights.  If you submit a timely and valid Exclusion request then you will receive no payment and you will retain your right to pursue claims against Gate City.
SUBMIT A CLAIM	Receive money as calculated in Section III of this Notice in exchange for a release of all claims.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. In order to speak at the hearing, however, you also need to timely submit a written objection.
OBJECT	Submit a written objection to the Court.  If you disagree with the proposed settlement, you may submit an objection. If the Court agrees with your objection, the parties can choose whether to withdraw the settlement or change its terms. If the Court rejects your objection, you will still be entitled to participate in the settlement unless you have excluded yourself.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula:**

Gate City will pay to each Qualified Claimant of the Settlement Class (as defined below) who submits a valid and timely Claim Form, as follows:

1. Approximately \$41.00, less applicable taxes and withholding, attorneys fees and costs, per each week of employment as an hourly Sales Representative between January 2, 2005 and March 2, 2007 as adjusted pursuant to the Stipulation and Settlement Agreement of Class Action Claims on file with the Court in this action.<sup>1</sup>

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<sup>1</sup> Each year of employment will be reduced by two weeks reflecting vacation, holiday and/or other time when Class Members may not have worked a full week.

2. Approximately \$41.00, less all employment taxes and withholding, attorneys fees and costs, per each week of employment as an hourly Merchandiser between September 25, 2002 and March 2, 2007 as adjusted pursuant to the Stipulation and Settlement Agreement of Class Action Claims on file with the Court in this action.

3. Approximately \$41.00, less all employment taxes and withholding, attorneys fees and costs, per each week of employment as an hourly Truck/Delivery Driver between March 2, 2003 and March 2, 2007 as adjusted pursuant to the Stipulation and Settlement Agreement of Class Action Claims on file with the Court in this action.

4. Approximately \$150.00, less applicable taxes and withholding, attorneys fees and costs, per each week of employment as a Salaried Sales Representative between September 25, 2002 and January 1, 2005 as adjusted pursuant to the Stipulation and Settlement Agreement of Class Action Claims on file with the Court in this action.

The only reason these per week amounts could be reduced is in the event the number of valid and timely claims is so high that it would cause total payments relating to this settlement by Gate City/Prestige I to be more than its total maximum contribution of \$3,500,000.00 (Three Million Five Hundred Thousand Dollars). Or if the Court approves fees, costs and other payments in addition to those currently set forth in the agreement, in no event shall GATE CITY/PRESTIGE I be required to contribute more than \$3,500,000.00 (Three Million Five Hundred Thousand Dollars) including tax withholdings and all settlement related costs and fees. In that event, each Class Member's claim would be reduced pro rata. The Per Week Payment for each Settlement Class Member is the Settlement Class Member's weeks (assuming 50 work weeks per year) worked multiplied by the final amount is to be paid per work week for hourly and salaried groups respectively (which will not be less than \$150 per week for the salaried group and \$41 per week for the three groups of hourly employees). If the number of valid and timely claims is too large for each member to receive the estimated weekly rate described above, then each participating Class Member will necessarily have his or her amount reduced below that estimate on a pro rata basis. Specifically, each participating Class Member's share will become a pro rata portion of the total amount allocated to the Class. Each Qualified Claimant's payment per work week could also, perhaps, be higher, in the event less than sixty percent of the funds are claimed. All Claim Forms must be timely, signed under penalty of perjury and completed in their entirety to be considered valid.

**B. Qualified Claimant Defined:**

Qualified Claimants will include only those members of the Settlement Class who timely submit appropriate hourly (green) and/or salaried (blue) Claim Forms (attached hereto), signed under penalty of perjury. The enclosed Claim Form(s) state the period of time that Gate City's records show they were employed by Gate City as a Salaried Sales Representative between September 25, 2002 and January 1, 2005, as an hourly Sales Representative between January 2, 2005 and March 2, 2007, and/or as an hourly Merchandiser between September 25 2002 and March 2, 2007, and/or as an hourly Truck/Delivery Driver between March 2, 2003 and March 2, 2007. The Claim Forms include an area where you may challenge the number of weeks worked.

**C. Calculations of Weeks Worked:**

For each Class Member submitting a claim, the amount payable to the Class Members will be calculated from each individual's representations and Gate City's records. Weeks worked information during the applicable class period will be assembled and reviewed by a Claims Administrator in the event of a dispute about the dates worked by an individual Class Member as a Salaried Sales Representative, or an hourly Sales Representative, Merchandiser or Truck/Delivery Driver. If a Class Member disputes the accuracy of Gate City's records, the dispute will be resolved through arbitration as described in Section E below.

**D. Release:**

The Joint Stipulation of Settlement and Release between Plaintiffs and Gate City contains a release, which releases Gate City from any and all claims each Class Member may have arising out of or related to the allegations of the class action complaints, including but not limited to claims (i) alleging that the class member was improperly classified and paid as an "exempt" employee, (ii) for alleged failure to provide meal and/or rest periods, automatic 30 minute deductions, reimbursement of business expenses, (iii) for failure to pay wages and overtime (iv) for failure to provide accurate pay stubs and (v) for penalties, interest, attorneys fees and costs under federal, state and local law.

**E. Arbitration of Disputes:**

If a Claimant disputes the accuracy of Gate City's records, then the Claims Administrator will talk to the claimant and a representative from Gate City, and issue a non-appealable decision as to the total amount due, if any, to the claimant.

**F. Enhancements for the Class Representative:**

Class Representatives Gary Owen, William Jay Van Vleet, Michael Peru and Daniel Rodriguez will be paid an enhancement of up to \$20,000.00, each, for their services as Class Representatives, as well as their willingness to accept the risk paying Gate City's attorneys fees and costs in the event of an unsuccessful outcome on a Motion For Summary Judgment, a Motion For Class Certification, at trial or on appeal.

**G. Costs and Attorneys Fees:**

In consideration for settling this matter and in exchange for the release by the Settlement Class, if approved by the Court Gate City agrees to pay to Class Counsel up to \$1,165,500.00 (U.S. Dollars). In addition, the attorneys for the class will be paid up to \$100,000.00 for their costs and expenses incurred in prosecuting this action, and the Class Administrator will receive an estimated \$25,000.00, subject to adjustment for services rendered, as approved by the Court, for its administration of this matter. All attorneys for the parties to this action believe the amount for attorneys' fees, costs and enhancements requested are fair and reasonable. The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the complete defenses to liability potentially available to Gate City, the inherent risk of trial on the merits, the risk of decertification, and the delays associated with litigation.

**IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

**A. Submitting a Claim:**

Anyone who wishes to submit a claim must complete and sign the appropriate Claim Forms and return them, via U.S. Mail, to:

Gate City Class Action Settlement  
c/o Gilardi & Co. LLC  
P. O. Box 8060  
San Rafael, California 94912-8060  
Phone (866) 247-2881

The Claim Forms must be **postmarked** no later than July 11, 2010. If Claim Forms are sent from within the United States they must be sent through the United States Postal Service via First Class U.S. Mail or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Claim Form. If you lost, misplaced, or need another Claim Form or a Request for Exclusion Form, you should contact the attorneys for the plaintiff Class listed below or the Claims Administrator.

**B. Excluding Yourself from the Settlement:**

Any person that does not wish to participate in the Settlement may exclude themselves (i.e., "opt out") by completing the Request for Exclusion Form which is also enclosed. The Request for Exclusion Form must be signed, dated, completed, and returned by First Class U.S. Mail, or the equivalent, to:

Gate City Class Action Settlement  
c/o Gilardi & Co., LLC  
P. O. Box 8060  
San Rafael, California 94912-9960  
Phone (866) 247-2881

The Request for Exclusion Form must be **postmarked** no later than 5:00 p.m. on June 26, 2010. If the Request for Exclusion Form is sent from within the United States it must be sent through the United States Postal Service via First Class U.S. Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion Form.

Any person who files a complete and timely Request for Exclusion Form shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. Any such person, at their own expense, may pursue any claims s/he may have against Gate City.

**DO NOT SUBMIT BOTH THE CLAIM FORM AND REQUEST FOR EXCLUSION FORM. IF YOU SUBMIT BOTH, THE REQUEST FOR EXCLUSION FORM WILL BE INVALID, YOU WILL BE INCLUDED IN THE SETTLEMENT CLASS, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT.**

## **Objection to Settlement**

You can object to the terms of the Settlement before final approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement unless you have submitted a valid and timely Request for Exclusion Form. To object, you must file a written objection and a notice of intention to appear at the Final Approval hearing currently set for August 3, 2010, at 8:30 a.m. in Dept S 35, with the Clerk of the Superior Court of the State of California, for the County of San Bernardino, 303 West Third Street, San Bernardino, California 92415-0240, and send copies to the following:

### CLASS COUNSEL

Matthew Righetti  
Righetti Law Firm, P.C.  
456 Montgomery St., Suite 1400  
San Francisco, CA 94104  
Telephone (415) 983-0900  
Facsimile (415) 397-9005  
Email: [matt@righettilaw.com](mailto:matt@righettilaw.com)

Clay Robbins III  
Magana, Cathcart & McCarthy  
1801 Avenue of the Stars, Suite 600  
Los Angeles, CA 90067  
Telephone (310) 553-6630  
Facsimile (310) 407-2295  
Email: [cr@mcmc-law.com](mailto:cr@mcmc-law.com)

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates of your employment by Gate City. To be valid and effective, any objections to approval of the Settlement must be filed with the Clerk of the Court and served upon each of the above-listed attorneys no later than June 26, 2010.

### **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this Settlement, you may enter an appearance in *propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an Entry of Appearance with the Clerk of the San Bernardino County Superior Court, and deliver copies to each of the attorneys listed above. Such Entry of Appearance must be filed with the Court and delivered to the above attorneys no later than June 26, 2010. You will then continue as a Settlement Class Member either in *propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the Settlement will be at 8:30 a.m. on August 3, 2010, in Department S 35 of the San Bernardino Superior Court, 303 West Third Street, San Bernardino, California 92415-0240, or such other, later date as the Court may authorize.

**IF YOU INTEND TO OBJECT TO THE SETTLEMENT, BUT WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT FUNDS, YOU MUST TIMELY RETURN YOUR CLAIM FORMS AS STATED ABOVE. IF THE COURT APPROVES THE SETTLEMENT DESPITE ANY OBJECTIONS, AND YOU DO NOT HAVE A CLAIM FORM ON FILE, YOU WILL NOT RECEIVE ANY SETTLEMENT PROCEEDS.**

## **V. EFFECT OF THE SETTLEMENT**

### **A. Released Rights and Claims:**

The Settlement is intended to settle all claims against Gate City that members of the Settlement Class have asserted or could have asserted in the lawsuit regarding the above-described alleged violations of state and federal wage and hour laws by Gate City through the date the Court approves this settlement. The release will extend to Gate City, its present or former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns. If you were employed as a Salaried Sales Representative, an hourly Sales Representative, Merchandiser, and/or Truck/Delivery Driver by Gate City within the State of California between September 25, 2002 and January 1, 2005 (in the case of Salaried Sales Representatives), January 2, 2005 and March 2, 2007 (in the case of hourly Sales Representatives), September 25, 2002 and March 2, 2007 (in the case of hourly Merchandisers), and March 2, 2003 and March 2, 2007 (in the case of hourly Truck/Delivery Drivers), and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described claims even if you do not submit a Claim Form. In addition, you will be barred from ever suing Gate City again with respect to the matters being settled in this Settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

**B. Payment to Claimants:**

Your distribution of the Settlement Fund will be paid approximately within thirty (30) days after Final Court Approval of this Settlement, or, if there is any objection to the Settlement that is not withdrawn, after all rights to appeals are exhausted. If there are no objections then the parties anticipate that payments will be mailed in August 2010.

**VI. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department S 35 of the San Bernardino County Superior Court, 303 West Third Street, San Bernardino, California 92415-0240, on August 3, at 8:30 a.m., to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs, administrative costs, and the enhancements paid to the Class Representatives. Class Counsel's application for attorneys' fees and reimbursement of expenses and administration costs and enhancements for Class Representatives will be on file with the Court no later than July 20, 2010, and will be available for review after that date. Class Counsel are seeking approval of a total of not more than \$1,165,500.00 (U.S. Dollars) as well as up to \$100,000.00 in costs incurred.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing unless you have timely filed an objection with the court.**

**VII. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Joint Stipulation of Settlement" which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including that stipulation, may be examined at any time during regular business hours at the Office of the Clerk of the San Bernardino County Superior Court, 303 West Third Street, San Bernardino, California 92415-0240.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**

**BY ORDER OF THE SUPERIOR COURT**