

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

BRIAN AIROLDI, on behalf of himself and all others  
similarly situated,

Plaintiff,

vs.

GOTTSCHALKS, INC.,

Defendant.

No. CV 152421

**NOTICE OF CERTIFICATION OF  
SETTLEMENT CLASS, PROPOSED  
SETTLEMENT, PRELIMINARY COURT  
APPROVAL OF SETTLEMENT, AND  
HEARING DATE FOR FINAL COURT  
APPROVAL**

**TO: ALL INDIVIDUALS WHO WERE EMPLOYED IN CALIFORNIA BY GOTTSCHALKS, INC. (“GOTTSCHALKS”) AT ANY TIME BETWEEN SEPTEMBER 8, 2001 THROUGH JULY 20, 2005, AND WHO WERE ELIGIBLE FOR VACATION BENEFITS UNDER GOTTSCHALKS’S VACATION POLICY.**

**PLEASE READ THIS NOTICE CAREFULLY, IT MAY AFFECT YOUR LEGAL RIGHTS TO VACATION PAY EARNED WHILE EMPLOYED BY GOTTSCHALKS.**

**IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT OF THIS CLASS ACTION, YOU DO NOT NEED TO TAKE ANY ACTION AT THIS TIME.**

**IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR OBJECT TO THE SETTLEMENT, OR IF YOU DECIDE NOT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.**

**IF YOU INTEND NOT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT A WRITTEN ELECTION NOT TO PARTICIPATE, AS DESCRIBED LATER IN THIS NOTICE, POSTMARKED ON OR BEFORE AUGUST 9, 2006, OR ELSE YOU WILL BE BOUND BY THE SETTLEMENT.**

Pursuant to the order of the Santa Cruz Superior Court entered on June 15, 2006, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A proposed settlement (the “Settlement”) has been reached between the parties in the class action pending in Santa Cruz Superior Court brought on behalf of the following individuals (the “Class”):

All individuals who were employed in California by Gottschalks at any time from September 8, 2001 through July 20, 2005, and who were eligible for vacation benefits under Gottschalks’s vacation policy.

The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because Gottschalks’s records indicate that you are a member of the Class. You do not need to do anything to participate in the Settlement. This notice is designed to inform you of how you can comment in favor of the Settlement, or object to the Settlement, or elect not to participate in the Settlement. Unless you elect not to participate in the Settlement, the Settlement, if finally approved by the Court, will be binding upon you, even if you object to the Settlement, and you will receive your share of the proceeds to be paid under the Settlement.

## 1. BACKGROUND OF THE CASE

On September 8, 2005, plaintiff Brian Airoidi commenced an action against Gottschalks in the Santa Cruz Superior Court entitled, "*Brian Airoidi, on behalf of himself and all others similarly situated, Plaintiff v. Gottschalks, Inc., Defendant*," No. CIV 152421 (the "Action"). In the Action, plaintiff alleges that Gottschalks failed to pay for earned vacation hours as required by California law. Specifically, plaintiff alleges that Gottschalks's vacation policy resulted in an unlawful forfeiture of unused vacation time at time of termination of employment (hereinafter "Termination Forfeiture") and at the time an employee reached his or her "anniversary date" (hereinafter "Anniversary Forfeiture").

Gottschalks denies all of plaintiff's material allegations. Specifically, Gottschalks denies that plaintiff and the Class are owed any forfeited vacation hours (however styled). Gottschalks further alleges that any entitlement by plaintiff and the Class to any vacation hours was exclusively created and governed by the Gottschalks, Inc. Employee Welfare Benefits and Trust (the "Vacation Plan"); that, under the Vacation Plan, plaintiff and the Class were paid all of the vacation hours to which they were entitled; that the Vacation Plan is an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"); and that ERISA preempts the application of state law, completely barring all of plaintiff's purported causes of action.

After substantial litigation and good-faith negotiations, in which both sides recognized the substantial risk of an adverse result in the Action for either side, plaintiff and Gottschalks agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Gottschalks that plaintiff's claims in the Action have merit or that it has any liability to plaintiff or the Class on those claims.

Plaintiff and Gottschalks, and their counsel, have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Class.

As a member of the Class, you will participate in the Settlement and share in the proceeds to be paid under the Settlement unless you elect not to participate.

## 2. SUMMARY OF THE SETTLEMENT

The Settlement provides for the following:

### a. Who is included in the Settlement?

You are included in the Settlement if you meet all of the conditions set forth in the beginning of this notice.

### b. What will I receive from the Settlement?

Gottschalks has agreed to pay and/or credit current and former Gottschalk employees a total of \$1.81 million (hereinafter "Total Settlement Fund") less 20% for Class Counsels' attorneys' fees and costs as described below.

(1) \$1.65 million of the Total Settlement Fund, less 20% for Class Counsels' attorneys' fees and costs, shall be paid to participating Class Members whose employment with Gottschalks terminated prior to July 15, 2005 (hereinafter the "Termination Forfeiture Fund"). This Termination Forfeiture Fund is intended to compensate for vacation forfeited upon termination of employment. Of the \$1.65 million, \$1.275 million will be allocated to forfeited vacation pay and \$375,000 will be allocated to the statutory interest accrued on that forfeited vacation pay. From the Termination Forfeiture Fund, each participating Settlement Class Member shall receive a Termination Forfeiture Award based on the product of a participating Class Member's vacation hours forfeited at the time of termination of his or her employment with Gottschalks and the participating Class Member's hourly wage at the time of the termination of employment, all as conclusively set forth in Gottschalks's records, or as determined by the Settlement Administrator, if applicable. If the participating Settlement Class Member is or was a salaried employee, his or her hourly wage will be calculated by taking his or her annual base salary and dividing it by 2,080 hours.

(2) \$25,000 of the Total Settlement Fund, less 20% for attorneys' fees and costs, represents vacation pay forfeited by Settlement Class Members whose employment with Gottschalks terminated prior to July 15,

2005 and who forfeited vacation pay as a result of not using all accrued vacation prior to his or her anniversary date with Gottschalks (hereinafter "Anniversary Forfeiture Fund for Former Employees"). Each participating Class Member who terminated his or her employment with Gottschalks prior to July 15, 2005, will receive an equal share of the Anniversary Forfeiture Fund for Terminated Employees. The individual awards from the Anniversary Forfeiture Fund for Former Employees shall be calculated by dividing the \$25,000, less 20% for Class Counsels' attorneys' fees and costs, by the number of eligible class members. Each participating Settlement Class Member shall then be paid his or her share from this fund ("Anniversary Forfeiture Award").

(3) \$135,000 of the Total Settlement Fund, less 20% for Class Counsel's attorneys' fees and costs, shall be credited vacation time to all participating Settlement Class Members who were current employees of Gottschalks as of July 15, 2005. The credit will be divided equally among these participating Settlement Class Members. The credit received by each such Class Member shall be divided by the Class Member's current hourly wage rate to determine the number of hours that will be credited to the Class Member's accrued vacation hours ("Vacation Credit Award"). If you were a current employee as of July 15, 2005, but have since terminated employment with Gottschalks, you will receive your Vacation Credit Award in a check rather than a credit.

(4) The Termination and Anniversary Forfeiture Awards to each participating Class Member is required by law to be reduced by applicable tax deductions and withholdings. Gottschalks will pay the employer's share of legally-required taxes.

(5) The awards described above will be paid or credited after final Court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement.

(6) You will be included in the Settlement unless you submit a written Election Not to Participate, as described later in this notice, postmarked on or before August 9, 2006.

(7) The Court has appointed Desmond, Marcello & Amster, P.O. Box 451999, Los Angeles, California 90045, telephone: (800) 775-7370, to act as an independent Settlement Administrator and to resolve any dispute concerning the calculation of a participating Class Member's entitlement to a settlement award.

**c. What Claims Are Being Released?**

The Settlement includes a release of Gottschalks, and past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and each of their employee benefit plans, including but not limited to Gottschalks's vacation wage plan, and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents (the "Released Parties"), from the "Released Claims." For purposes of this Settlement, the "Released Claims" are defined as:

All claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal constitution, statute, rule or regulation, including state wage and hour laws, whether for economic damages, non economic damages, restitution, penalties or liquidated damages, and arising out of, relating to, or in connection with the Complaint filed in the Class Action, including, but not limited to, any and all facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of claims that Gottschalks failed to pay all vacation benefits and/or vacation wages that were owed, and all claims for penalties based upon Gottschalks's alleged failure to pay Settlement Class Members from September 8, 2001 through July 20, 2005 vacation wages that accrued during their employment or alleged forfeitures of unused vacation for Settlement Class Members; and/or that Gottschalks owes wages, any federal or state law penalties including but not limited to California Labor Code Sections 203 and 2699, Labor Code Private Attorney General Act penalties, interest, attorneys' fees or other damages of any kind based on a failure to pay all such vacation benefits and/or vacation wages that were owed (whether based on California state wage and hour law, federal law, contract, or otherwise); that

Settlement Class Members are entitled to payment under California Labor Code Sections 201, 202, 203, or 227.3; and/or the causes of action asserted in the Action, including any and all claims for alleged failure to pay vacation benefits and/or vacation wages pursuant to state law, federal law, or contract, and, as related to the foregoing, for alleged unlawful, unfair and/or fraudulent business practices under California Business and Professions Code § 17200, et seq.

With respect to the Released Claims, the participating Settlement Class Members will be deemed to have stipulated and agreed that, upon the Effective Date, he/she shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The participating Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

The participating Settlement Class Members agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims.

d. **Class Representative:** In addition to his share as a participating Settlement Class Member, plaintiff Brian Airoidi will be paid up to \$5,000 for his services as Class Representative, as well as his willingness to accept the risk of paying Gottschalks's attorneys' fees and costs in the event of an unsuccessful outcome. This payment will be made by Gottschalks separate and apart from the Settlement Fund and Vacation Credits described above.

e. **Attorneys' Fees:** Class Counsel (identified in paragraph 4(b) below) will seek approval from the Court for payment of costs and attorneys' fees in the amount of \$362,000, which, if approved by the Court, will be paid by Gottschalks out of the \$1.81 million Settlement Fund and Vacation Credits to be paid by Gottschalks. Class Counsel believe the amount for costs and attorneys' fees requested is fair and reasonable, and Gottschalks will not oppose their request for that amount.

f. **Costs of Administration:** Gottschalks will pay the reasonable costs of administering the settlement, including the Settlement Administrator's Fees and Expenses, separate and apart from the \$1.81 million Settlement Fund to be paid by Gottschalks.

### 3. **PLAINTIFF AND CLASS COUNSEL'S SUPPORT OF THE SETTLEMENT.**

Plaintiff as Class Representative and Class Counsel support the Settlement. Their reasons include the inherent risk of ERISA preemption, denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the Settlement is fair, reasonable, and adequate.

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

**a. Participating in the Settlement.**

Plaintiff as Class Representative and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the settlement, you are a part of the Class, you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and you will be deemed to have released the claims against Gottschalks and the other released parties described above. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

**b. Commenting in favor of the Settlement.**

If you wish, you may comment in favor of the Settlement in writing and/or by appearing in person at the final approval hearing, which will be held on September 29, 2006. To do so, not later than August 9, 2006, you must submit a written notice of your comments and/or your intent to appear and comment in favor of the Settlement at the final approval hearing. Your notice should include your full name, address, date of birth, and dates of your employment at Gottschalks. Send your notice to:

Clerk of Court  
Superior Court of California, County of Santa Cruz  
701 Ocean Street, Room 110  
Santa Cruz, California 95060

Also send copies of your notice to:

**CLASS COUNSEL**

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**DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL.**

**c. Objecting to the Settlement.**

You may object to the terms of the Settlement before final approval, either by filing a written objection or filing a notice of your intent to appear and object at the final approval hearing. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement, unless you also submit an Election Not to Participate. To object, you must send a written notice of objection or a written notice of your intent to appear and object at the final approval hearing to the court and to counsel at the same addresses shown above. **DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL.** Any written objection and/or notice of your intent to appear at the hearing must state each specific reason in support of your objection and any legal support for each objection. Your written objection and/or notice of your intent to appear at the hearing must also state your full name, address, date of birth, and the dates of your employment at Gottschalks. To be valid and effective, the Court and Counsel must receive any written objections and/or notices of intent to appear at the hearing not later than August 9, 2006. A Class Member who fails to file and serve a written statement of objection in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

**d. Excluding Yourself from the Settlement.**

If you do not wish to participate in the Settlement, you must send a written statement requesting exclusion from the Class and the Settlement ("Election Not to Participate"). The Election Not to Participate must include your name, address, Social Security Number and telephone number. The Election Not to Participate must be signed by you, dated, notarized, and returned to:

Gottschalks Settlement Administrator  
c/o Desmond, Marcello & Amster  
P.O. Box 451999  
Los Angeles, California 90045  
Telephone: (800) 775-7370

The Election Not to Participate must be postmarked no later than August 9, 2006. If the Election Not to Participate is sent from within the United States it must be sent through the United States Postal Service via first class delivery. A Class Member who fails to mail an Election Not to Participate in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and the Judgment, regardless of whether he or she has objected to the Settlement.

Any person who files a complete and timely Election Not to Participate will, upon receipt, no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such person, at his or her own expense, may pursue any claims he or she may have against Gottschalks, its affiliates, predecessor, or acquired companies. An incomplete or non-notarized Election Not to Participate will be deemed invalid.

**5. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing on September 29, 2006 in Department 8 of Santa Cruz Superior Court, 701 Ocean Street, Santa Cruz, California 95060, at 8:30 a.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and the special payments made to plaintiff as Class Representative. Class Counsel are seeking approval of a total of not more than \$362,000 in costs and attorneys' fees incurred or to be incurred.

The hearing may be postponed without further notice to the Class. **It is not necessary for you to appear at this hearing. If you have given notice of your comments in favor of the settlement, or your objection to the settlement, you may appear at the hearing at your option so long as you have filed a notice of intent to appear by August 9, 2006.**

6. **GETTING MORE INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at any time during regular business hours in Department 8 of the Superior Court of the State of California, Santa Cruz County, 701 Ocean Street, Santa Cruz, California, or you may contact Class Counsel or the Settlement Administrator. **PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**

BY ORDER OF THE SUPERIOR COURT.

Dated: June 15, 2006

Hon. Robert B. Yonts, Jr.  
Judge of the Superior Court