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*Attorneys for Individual and Representative
Plaintiff Julie Washburn*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JULIE WASHBURN, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

PENDLETON WOOLEN MILLS, INC.,
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 3:21-cv-06472-VC

Amended Complaint: October 27, 2021

~~[Proposed]~~ ORDER GRANTING FLSA AND PAGA SETTLEMENT APPROVAL AS
AMENDED

Upon review and consideration of the motion papers and the Settlement Agreement and the exhibits thereto, including the proposed form of Notice to the FLSA Collective (“Notice”), and having heard the statements of counsel, the Court HEREBY ORDERS as follows:

Definitions

1. Except as otherwise specified herein, the Court for purposes of this FLSA Approval Order adopts all defined terms set forth in the Settlement Agreement.

Approval of the FLSA Settlement

2. The Court grants the unopposed Motion for Fair Labor Standards Act (“FLSA”) Settlement Approval. The Settlement Agreement, attached as **Exhibit 1**, to the Declaration of Bryan J. Schwartz, is incorporated herein by reference, and is approved as a fair and reasonable resolution of a bona fide dispute, for the reasons articulated in the Motion. The Parties shall perform their obligations under the Settlement Agreement in accordance with its terms.

Jurisdiction

3. The Court has personal jurisdiction over all Parties to the action and subject matter jurisdiction to approve the Settlement Agreement.

Fairness

4. The Court approves the Notice of FLSA Collective Action Settlement Agreement, along with the related notification procedure contemplated by the Settlement, constitutes the best notice practicable under the circumstances and are in full compliance with the applicable laws and the requirements of due process. The Court further finds that the Collective Notice fully and accurately informs the Collective Members of all material elements of the Settlement and of the Collective Members' rights, including to be excluded from the Settlement. Subject to the terms of the Settlement, the Notice shall be mailed via first-class mail to the most recent known address

of each Collective Member within the timeframe specified in the Settlement. Accordingly, the Court determines that all Collectives Members who remain part of this action by failing to withdraw their consent-to-join, opt-in forms will be bound by this Order and the Judgment.

Certification under the FLSA

5. The FLSA Collective is defined as “all persons employed by Defendant during the FLSA Collective Period who opted in to this Action by filing a Consent to Join with the Court on or before March 9, 2022.” The Court finds and determines that the action meets all of the legal requirements for certification as a collective action under section 16(b) of the FLSA, 29 U.S.C. § 216(b), and it is hereby ordered that the action is certified as a collective action for purposes of settlement of this action.

Approval of PAGA Penalties Settlement

6. The Court approves that \$4,370 (Four Thousand Three Hundred and Seventy Dollars) shall be allocated to settle the PAGA penalty claim. Of this amount, 75% shall be paid to the LWDA, and 25% shall be paid to the PAGA Penalties Aggrieved Employees as set forth in the Settlement Agreement.

Appointment of Collective Action Representative; Service Payment

7. The Court appoints Julie Washburn as the FLSA Collective Action representative. The Court determines that the award of \$5,000 to Ms. Washburn, in addition to her individual Settlement share, is fair and reasonable.

Appointment of Class Counsel; Attorneys’ Fees and Costs

8. The Court appoints Bryan Schwartz Law and its attorneys Bryan J. Schwartz, Samuel L. Goldsmith, and Cassidy A. Clark as FLSA Collective Action Counsel.

9. The Court approves Collective Counsel's request for attorneys' fees of thirty percent of the Gross Settlement Amount, for a total of \$131,250 in fees. This award is reasonable under the percentage of the common fund method, and is consistent with Ninth Circuit authority. *See, e.g., In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of the common fund); *In re Activision Sec. Litig.*, 723 F. Supp. at 1375 (awarding 32.8% of the common fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of 33.3% of the common fund); *see also generally Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) (finding that upward departure from the Ninth Circuit's 25%-of-the-common-fund benchmark may be warranted, and surveying cases for lodestar cross-check, finding an average lodestar multiplier of 3.32x).

10. The Court will withhold 10% of the attorneys' fees until after a Post-Distribution Accounting has been filed and the Court has authorized the release of the remainder of the fee award. The Post-Distribution Accounting should be filed within 21 days of the distribution of the settlement funds (but before distribution to the *cy pres* recipient), and should detail: when payments were made to Collective members, the number of members who were sent payments, the total amount of money paid out to members, the average and median recovery per class member, the largest and smallest amount paid to members, the number and value of cashed and uncashed checks, the number of members who could not be contacted, the amount distributed to each *cy pres* recipient, any significant or recurring concerns communicated by members to the settlement administrator and counsel since final approval, any other issues in settlement administration since FLSA Settlement Approval, and how any concerns or issues were resolved. The Post-Distribution Accounting should discuss the benefit conferred on the class from the

injunctive relief described in the Settlement Agreement. With the Post-Distribution Accounting, Collective Counsel should submit a proposed order releasing the remainder of the fees.

11. The Court approves Collective Counsel's request for costs in the amount of \$9,000.

IT IS SO ORDERED.

Dated: June 3, 2022



HON. VINCE CHHABRIA
UNITED STATES DISTRICT JUDGE