

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:21-cv-06472-VC

**COLLECTIVE ACTION
SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made and entered into by and between Plaintiff Julie Washburn (“Washburn” or “Plaintiff”), individually and on behalf of those who have opted into the Action (as defined below), and Defendant Pendleton Woolen Mills, Inc. (the “Company” or “Defendant”), subject to the terms and conditions herein and the Court’s approval.

I. Definitions.

1. The “Parties” to this Settlement Agreement are Washburn on behalf of herself and as the Collective Representative, the Fair Labor Standard Act (“FLSA”) Collective (as defined below), and Defendant.

2. The “Action” means the operative complaint in the case entitled *Julie Washburn v. Pendleton Woolen Mills Inc.*, U.S. District Court for the Northern District of California, Case No. 3:21-cv-06472.

1 3. The “Court” in the Action is the U.S. District Court for the Northern District
2 of California.

3 4. The “Effective Date” of this Settlement Agreement shall mean the date when
4 all of the following events have occurred: (a) this Agreement has been executed by all
5 Parties, the Collective Counsel, and Defendant’s Counsel; and (b) the Court has given
6 approval of this Agreement.

7 5. “Collective Counsel” refers to Bryan Schwartz and Samuel L. Goldsmith of
8 Bryan Schwartz Law.

9 6. “FLSA Collective Period” means October 27, 2018 through the date of
10 approval by the Court.

11 7. The “FLSA Collective” refers to all persons employed by Defendant during
12 the FLSA Collective Period who opted in to this Action by filing a Consent to Join with the
13 Court on or before March 9, 2022. Individuals who filed a Consent to Join, but later
14 withdrew that consent, are not included in the FLSA Collective. The FLSA Collective
15 Members as of the date of the execution of this settlement are listed in Exhibit A, attached
16 hereto.

17 8. “FLSA Collective Member” refers to individual members of the FLSA
18 Collective; collectively “FLSA Collective Members.”

19 9. “PAGA Penalty Period” means August 20, 2020 through the date of approval
20 by the Court. PAGA means Private Attorneys General Act, Cal. Lab. Code §2698, *et seq.*

21 10. “PAGA Penalties Aggrieved Employees” refers to Store Managers employed
22 by Defendant in California during the PAGA Penalty Period. The PAGA Penalties
23 Aggrieved Employees are listed in Exhibit B, attached hereto.

24 11. “Washburn’s Individual Claims” refers to claims two through five in the First
25 Amended Complaint, filed on October 25, 2021.

1 12. The "Settlement Amount" refers to Defendant's payment for this Settlement.
2 The Settlement Amount includes the attorney fees of Collective Counsel, litigation costs
3 and expenses of Collective Counsel (which includes, without limitation, all such fees and
4 costs incurred to date, as well as such fees and costs to be incurred in documenting the
5 settlement, securing Court approval of this Settlement Agreement, and obtaining judgment
6 in the Action), the Service and Individual Settlement Payment (as defined below) as
7 approved by the Court, all costs of administration, the amount attributable to payments
8 pursuant to PAGA, and payments to cover all claims on behalf of the FLSA Collective.

9 13. "Service and Individual Settlement Payment" refers to payment made to the
10 Collective Representative that is in addition to any Individual Payment Amount (defined
11 below), subject to approval by the Court.

12 14. "Net Settlement Proceeds" is the Settlement Amount less the amounts
13 approved and awarded by the Court for: attorneys' fees and costs incurred or advanced by
14 Collective Counsel, the Service and Individual Settlement Payment to the Collective
15 Representative, any costs of administering the settlement, and the amount attributable to
16 payments to the Labor and Workforce Development Agency ("LWDA") pursuant to PAGA.

17 15. "Individual Payment Amount" means the portion of the Net Settlement
18 Proceeds distributable to each FLSA Collective Member who participates in the settlement
19 (*i.e.*, who does not timely opt out of the settlement) and/or to each PAGA Penalties
20 Aggrieved Employee.

21 16. "Individual Workweeks" is the total weeks worked by each FLSA Collective
22 Member and/or PAGA Penalties Aggrieved Employee while employed by Defendant during
23 the relevant period (either the FLSA Collective Period or the PAGA Penalty Period), as
24 determined by Collective Counsel based on records provided by Defendant.

25 17. The "Released Parties" refers to Defendant and its subsidiaries, affiliates,
26 parents and attorneys, and each of their company-sponsored employee benefit plans, and

1 their respective successors and predecessors in interest, all of their respective officers,
2 directors, employees, administrators, fiduciaries, trustees and agents, and each of their past,
3 present and future officers, directors shareholders, employees, agents, principals, owners,
4 founders, heirs, representatives, accountants, auditors, consultants, attorneys, and insurers.

5 **A. General.**

6 **1.** On August 20, 2021, Plaintiff filed a Complaint for Damages, Restitution, &
7 Injunctive Relief in this Court, alleging five causes of action: (1) on behalf of herself and those
8 similarly situated, failure to pay overtime wages under Fair Labor Standards Act, 29 U.S.C. § 207;
9 (2) on behalf of herself, failure to pay overtime under Cal. Labor Code §§ 510, 1194, and IWC
10 Wage Orders; (3) on behalf of herself, failure to provide and/or authorize meal and rest periods
11 under Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders; (4) on behalf of herself, failure to
12 provide accurate itemized wage statements under Cal. Labor Code § 226; and (5) on behalf of
13 herself, unlawful and/or unfair business practices in violation of Cal. Business & Professions Code
14 § 17200, *et seq.*

15 **2.** On August 20, 2021, Plaintiff complied with the administrative exhaustion
16 requirements of PAGA, in a letter to the LWDA and Defendant, stating facts and theories against
17 Defendant for, among other things, failure to provide meal and rest periods; failure to pay overtime;
18 failure to issue accurate wage statements; and failure to timely pay wages due during the course of
19 employment and at separation of employment.

20 **3.** On October 25, 2021, Plaintiff filed a First Amended Complaint, adding a PAGA
21 penalty claim as set forth in their letter to the LWDA. The FAC alleged claims on a representative
22 basis.

23 **4.** On November 22, 2021, the Parties stipulated to conditional certification of the
24 FLSA Collective. In so doing, the parties agreed that the stipulation had no effect on either party's
25 arguments in favor of or against: final certification under the FLSA or decertification of the
26 collective action; Plaintiff's allegations of "willfulness"; size of the collective; and other arguments

1 | pertaining to the merits of this action or appropriateness of collective certification or proceeding as
2 | a collective action.

3 | **5.** Through this Action, Plaintiff contends that Defendant violated the FLSA and
4 | California Labor Code and that this case is appropriate for final certification.

5 | **6.** Defendant denies any liability or wrongdoing of any kind associated with the claims
6 | alleged in the Action, and further denies that the Action is appropriate for collective treatment for
7 | any purpose other than pursuant to this settlement. Defendant contends that it has complied at all
8 | times with the FLSA and the California Labor Code. It is Defendant's position that, if this case
9 | were to be litigated, certification would be inappropriate.

10 | **7.** The FLSA Collective was provided notice on December 13, 2021. The opt-in period
11 | ended on March 9, 2022.

12 | **8.** After conducting some initial, written discovery, the Parties participated in a full-day,
13 | arm's-length, mediation with Steve Pearl on February 16, 2022. The Parties each presented their
14 | facts and arguments, and with Mr. Pearl's assistance, eventually negotiating a memorandum of
15 | understanding to settle the Action.

16 | **9.** The Parties agree that the Action, the negotiation and execution of this Settlement
17 | Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
18 | Settlement Agreement: (i) shall not be used as an admission or evidence of wrongdoing on behalf
19 | of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
20 | action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
21 | may not be used as, an admission or evidence of the appropriateness of these or similar claims for
22 | collective certification in the Action or with respect to any other proceeding.

23 | **10.** Collective Counsel represent they have conducted a thorough investigation into the
24 | facts and law during the prosecution of this Action, including the exchange of extensive informal
25 | discovery and the review and verification of statistical data and other facts and information
26 | provided by Defendant. Counsel for the Parties also represent they have investigated the applicable

1 law as applied to the facts discovered regarding the alleged claims and defenses thereto, and the
2 damages claimed by Plaintiffs.

3 **11.** Based on their own independent investigation and evaluation, Collective Counsel are
4 of the opinion (and will so represent to the Court) that settlement for the consideration and on the
5 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
6 interest of the FLSA Collective, PAGA Penalties Aggrieved Employees, and Washburn in light of
7 all known facts and circumstances, including the risk of significant delay, the risk the FLSA
8 Collective will not remain certified by the Court, and the defenses asserted by Defendant.
9 Defendant and its counsel also agree (and will so represent to the Court) that this settlement is fair
10 and in the best interest of the FLSA Collective, PAGA Penalties Aggrieved Employees, and
11 Washburn.

12 **12.** The Parties agree that the FLSA Collective described herein may remain certified for
13 settlement purposes only. If for any reason the settlement is not approved, Defendant retains all
14 arguments and defenses against continued and final certification of the FLSA Collective; it also
15 retains all arguments pertaining to the FLSA Collective Period, including that Washburn cannot
16 establish "willfulness". It likewise retains all defenses to the PAGA Penalties Aggrieved
17 Employees, including its defense that the claim is unmanageable. The Parties further agree that
18 continued certification for purposes of the settlement is in no way an admission that certification is
19 proper and that evidence of this limited stipulation for settlement purposes only will not be
20 admissible for any purpose in this or any other proceeding.

21 **B. Terms of Settlement.**

22 **1.** The financial terms of the settlement are as follows:

23 (a) **Settlement Amount:** The Parties agree to settle this Action for Defendant's
24 payment of \$437,500 (Four Hundred and Thirty-Seven Thousand and Five Hundred Dollars). This
25 Settlement Amount includes all claims on behalf of the FLSA Collective, the attorneys' fees of
26 Collective Counsel, litigation costs and expenses of Collective Counsel (which includes, without

1 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in
2 documenting the settlement, securing Court approval of the settlement, and obtaining judgment in
3 the Action), the Service and Individual Settlement payment to Plaintiff (as approved by the Court),
4 the amount attributable to payments pursuant to PAGA (including payment to the LWDA), and all
5 costs of administration. Employer payroll taxes due on wage payments made under the Settlement
6 shall be paid separately by Defendant.

7 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is the Settlement
8 Amount less the amounts approved and awarded by the Court for: attorneys’ fees and documented
9 litigation costs and expenses incurred or advanced by Collective Counsel, the Service and
10 Individual Settlement Payment to Washburn individually and as Collective Representative, the
11 amount attributable to payments to the LWDA pursuant to PAGA, and any costs of administering
12 the settlement. Additionally, \$25,000 (the “Reserve Fund”) will be subtracted from the initial Net
13 Settlement Proceeds calculated amount to be used to help resolve any disputes by Collective Action
14 Members that are deemed well-founded by Collective Counsel and Defendant (*see infra*) – any of
15 the Reserve Fund not needed to resolve disputes will be distributed when settlement checks are
16 distributed to Collective Action Members.

17 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
18 Amount” means the portion of the Net Settlement Proceeds distributable to each FLSA Collective
19 Member who participates in the Settlement (i.e., who has not opted out to this Settlement) or PAGA
20 Penalties Aggrieved Employee. The Individual Payment Amounts will be calculated as follows:

21 i. Each FLSA Collective Member who does not opt out of the Settlement
22 and each PAGA Penalties Aggrieved Employee shall be paid an Individual Payment Amount.

23 ii. Based on its records, Defendant will determine the total weeks worked
24 by each FLSA Collective Member during the FLSA Collective Period and/or the total weeks
25 worked by each PAGA Penalties Aggrieved Employee during the PAGA Penalties Period.
26

(1) To compute the Individual Payment Amount, the Net Settlement Proceeds will be multiplied by a fraction, the numerator of which is the Individual Workweeks of each respective FLSA Collective Member and the denominator of which is the aggregated Individual Workweeks of all FLSA Collective Members who participate in the Settlement.

(1) iv. *PAGA Penalties Aggrieved Employees* The Parties agree that \$4,370 (Four Thousand Three Hundred and Seventy Dollars) shall be allocated to settle claim seven, the PAGA penalty claim. Of this amount, 75% (Seventy-Five Percent) shall be paid to the LWDA, and 25% (Twenty-Five Percent) shall be paid to the PAGA Penalties Aggrieved Employees.

(3) For tax purposes, the Individual Payment Amount shall be taxable as penalties, for which an IRS Form 1099 shall be issued and no withholdings will be made.

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1 | suit) will be set by the Court in its discretion, not to exceed \$5,000 (Five Thousand Dollars). This
2 | amount will be deducted from the Settlement Amount. An IRS Form 1099 will be issued to
3 | Washburn for this payment.

4 | (e) **Attorneys' Fees:** An award to Collective Counsel of attorneys' fees will be
5 | subtracted from the Settlement Amount in an amount to be set by the Court taking into account the
6 | settlement award that has been made available for the Settlement Class by the efforts of Collective
7 | Counsel. The amount awarded shall not exceed one third of the Settlement Amount, or \$145,833.33
8 | (One Hundred and Forty Five Thousand Eight Hundred and Thirty Three Dollars, Thirty Three
9 | Cents). An IRS Form 1099 will be issued to Collective Counsel with respect to its award of
10 | attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
11 | requested by Collective Counsel so long as the request does not exceed \$145,833.33.

12 | (f) **Attorneys' Costs and Expenses:** Collective Counsel will be reimbursed
13 | from the Settlement Amount in an amount to be set by the Court for documented out-of-pocket
14 | litigation costs and expenses, not to exceed Ten Thousand Dollars (\$10,000). An IRS Form 1099
15 | will be issued to Collective Counsel with respect to its award of costs and expenses. Defendant
16 | agrees not to dispute or otherwise object to the attorneys' cost award requested by Collective
17 | Counsel so long as the request does not exceed \$10,000.

18 | (g) **Settlement Administration Costs:** The fees and other charges of the
19 | Collective Counsel to administer the Settlement are expected to total no more than Ten Thousand
20 | (\$10,000.00) and will be paid from the Settlement Amount. These fees shall include any costs
21 | associated with providing notice of the Settlement to the FLSA Collective, the required tax
22 | reporting, and the issuing of 1099 forms. Collective Counsel shall be responsible for (a) printing
23 | and distributing the Court-approved Notice to all Collective Members; (b) processing disputes and
24 | opt outs; (c) hiring an administrator if Collective Counsel and/or the Court deem one necessary; (d)
25 | overseeing the administration of the settlement distribution; (e) overseeing the administrator's tax
26 |

1 reporting; (f) overseeing any necessary status reports; and (g) other duties and responsibilities set
2 forth herein.

3 **C. Release of Claims**

4 1. Upon Final Approval by the Court, Washburn, FLSA Collective Members who do not
5 timely opt out, and the PAGA Penalties Aggrieved Employees shall be bound by the Settlement,
6 and, at the same time, will have released the Released Parties from the Released Claims.

7 2. The "Released Claims" with respect to the "Released Parties" (defined below) are all
8 federal claims for wages, statutory and civil penalties, damages and liquidated damages, interest,
9 injunctive or equitable relief, fees and costs, and California PAGA claims, that were or could have
10 been alleged in the First Amended Complaint (FAC) based upon the facts pled in the FAC, which
11 arose during a Class Member's employment, contract, or other work relationship with Defendant
12 during the applicable period (either the FLSA Collective Period or the PAGA Penalty Period).
13 Such claims include the following: federal claims relating to denied overtime compensation and
14 minimum wages, and recordkeeping violations; and, California PAGA penalty claims arising from
15 alleged overtime, minimum wage, recordkeeping, timely payment of wages, missed or non-
16 compliant meal and/or rest periods, and paystub violations.

17 3. "Released Parties" means Defendant and its subsidiaries, affiliates, parents and
18 attorneys and each of their company-sponsored employee benefit plans, and their respective
19 successors and predecessors in interest, all of their respective officers, directors, employees,
20 administrators, fiduciaries, trustees and agents, and each of their past, present and future officers,
21 directors shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
22 consultants, attorneys, insurers and reinsurers.

23 4. In consideration for the Service and Individual Settlement Payment, Washburn shall
24 also be bound by a general release of claims with respect to the Released Parties, which shall
25 include all claims related to Washburn's work relationship with Defendant prior to the date of the
26

1 agreement, including but in no way limited to claims related to discrimination, harassment,
2 retaliation, benefits, and leaves of absence.

3 **D. Notice and Exclusion Process.**

4 1. Within thirty (30) calendar days after entry of the order granting approval of this
5 Settlement, the Collective Counsel will send the FLSA Collective Settlement Notice to the FLSA
6 Collective, in the form attached hereto as **Exhibit C**, and as approved by the Court, by first class
7 mail and email. FLSA Collective Members will have 30 (thirty) days to opt out of the Settlement.
8 The FLSA Collective will receive such reminders as Collective Counsel deems appropriate.

9 2. The FLSA Collective Notice will fully advise each member of the settlement, the
10 ability to opt out, include an opt out form, and the deadline for the same.

11 3. Each FLSA Collective Notice will contain personalized information setting forth the
12 total amount of Individual Workweeks for each FLSA Collective Member and their estimated
13 Individual Payment Amount. To the extent a FLSA Collective Member disputes any of the
14 information listed on their FLSA Collective Notice, the FLSA Collective Member may submit any
15 evidence to the Collective Counsel showing such information the Member contends should be
16 reflected in the Notice. The Parties will meet and confer to attempt to resolve any disputes, and
17 Defendant's records will be presumed determinative. The FLSA Collective Notice will also request
18 a completed IRS W-9 for disbursement of the settlement payments, and Defendant will cooperate
19 with Collective Counsel and any third-party administrator to ensure Social Security Numbers are
20 available to permit appropriate tax reporting.

21 4. In order to elect not to participate in the Settlement, a FLSA Collective Member
22 must sign an opt-out form in substantially the form shown in Exhibit D, attached hereto, and mail
23 the form to the Collective Counsel no later than thirty (30) calendar days after the initial mailing of
24 the FLSA Collective Notice to FLSA Collective Members, unless the Court requires a longer
25 period, in which case the Court ordered period will apply ("Settlement Opt-Out Period"). The date
26 of the postmark shall be deemed the date of submission. The timeliness of a submitted opt-out

1 form will be determined by valid postmark. If the 30th day falls on a Sunday or federal holiday, the
2 time to opt out will be extended to the next day on which the U.S. Postal Service is open.

3 **5.** Collective Counsel will notify Defendants of the total number of valid opt-out forms
4 within three (3) calendar days after the end of the Settlement Opt-Out Period.

5 **6.** The allocations of any FLSA Collective Members who opt out of the Settlement will
6 be allocated *pro rata* to the participating Members at the time of settlement disbursement, along
7 with any remaining Reserve Fund amount. The Settlement non-reversionary – under no
8 circumstances other than voiding the Agreement as provided in I.G.1 herein shall any of the
9 Settlement Amount revert to Defendant.

10 **E. Settlement Payments and Disbursement**

11 **1.** Collective Counsel shall inform Defendant, through Defendant's counsel, the
12 amount that will be allocated as wages to the FLSA Collective Members under this Agreement no
13 more than seven (7) calendar days after the end of the Settlement Opt-Out Period.

14 **2.** Defendant shall deposit the Settlement Amount, minus the amount allocated as
15 wages to the FLSA Collective Members, into the Collective Counsel's trust account no more than
16 fifteen (15) calendar days after either the Effective Date or the date that Collective Counsel
17 provides Defendant with the amount to be allocated as wages to the FLSA Collective Members ,
18 whichever is later.

19 **3.** Except for the amounts allocated as wages to the participating FLSA Collective
20 Members, disbursements of the funds shall be made by Collective Counsel or Collective Counsel's
21 designated third-party administrator to participating FLSA Collective Members, Washburn, the
22 PAGA Penalties Aggrieved Employees, and the LWDA within fourteen (14) calendar days after
23 payment is made by Defendant.

24 **4.** Also within fourteen (14) days of depositing funds into the Collective Counsel's
25 trust account, Defendant will pay the portion allocated as wages to participating FLSA Collective
26

1 Members and will pay its share of payroll taxes to the appropriate payees according to normal
2 payroll tax submission timelines of its third-party payroll provider.

3 **5.** FLSA Collective Members must cash their Individual Payment Amount checks
4 within one hundred twenty (120) calendar days after they are mailed by Collective Counsel and
5 Defendant. The value of any checks uncashed more than one hundred twenty (120) days after
6 mailing shall be promptly distributed as follows: If more than \$10,000.00 of the payments are
7 uncashed, there will be a second distribution *pro rata* to participating FLSA Collective Members; if
8 less than \$10,000 of the individual payments are uncashed, or any of the second checks are
9 uncashed after ninety (90) days, they will be voided and the amount will be allocated to Legal Aid
10 at Work, a suitable *cy pres* recipient following California's standards.

11 **F. Duties of the Parties Prior to Court Approval.**

12 **1.** Promptly after execution of this Settlement Agreement, Plaintiffs shall move the
13 Court for approval of this Settlement and entry of an order accomplishing the following:

- 14 (a) approving as to form and content the proposed FLSA Collective Notice;
15 (b) approving as to form and content the proposed opt-out form;
16 (c) approving the settlement, adjudging the terms thereof to be fair, reasonable
17 and adequate, and directing consummation of its terms and provisions;
18 (d) setting attorneys' fees and costs payable to Collective Counsel;
19 (e) setting the Service and Individual Settlement payment to Washburn;
20 (f) approving Collective Counsel or Collective Counsel's designated third-party
21 administrator to administer this settlement; and
22 (g) entering judgment in this Action, dismissing it in its entirety with prejudice, in
23 accordance with this Stipulation.

24 The Parties shall submit this Settlement Agreement to the LWDA (as required by Labor
25 Code § 2699(1)(2)) and to the Court in support of Plaintiffs' unopposed motion for approval of the
26 settlement.

G. Miscellaneous Provisions:

1. Voiding the Agreement.

A failure of the Court to approve any material condition of this Settlement Agreement which effects “a fundamental change of the Parties’ settlement” shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party.

Defendant also shall have the right to void the entire Settlement Agreement if more than three (3) FLSA Collective Members opt out of the settlement during the Settlement Opt-Out Period.

2. Parties’ Authority.

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

3. Mutual Full Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Collective Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court’s approval of the settlement.

4. No Prior Assignments.

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

1 **5. Employer Statement.**

2 In conjunction with this Settlement, Defendant commits to use best efforts to staff each
3 Exempt Store Manager with at least two full-time employees or equivalents (FTEs), subject to
4 complications in turnover, recruitment, reasonable hiring timelines, and in accord with company
5 hiring policies and practices. Defendant also commits to assisting every Store Manager in hiring all
6 of their store's budgeted employees upon request from the relevant Store Manager. Defendant will
7 classify as "non-exempt" under the federal FLSA and (if applicable) California law any Store
8 Manager who is not budgeted to have at least two FTEs in their store.

9 **6. Settlement Payments.**

10 All Individual Settlement Payments to FLSA Collective Members and the PAGA Penalties
11 Aggrieved Employees shall be deemed to be paid to such individuals in the year in which such
12 payments actually are received by such individuals. It is expressly understood and agreed that the
13 receipt of such individual settlement payments will not entitle any individual to additional
14 compensation or benefits under any company bonus, contest, or other compensation or benefit plan
15 or agreement in place during the period covered by the Settlement, nor will it entitle any individual
16 to any increased retirement, 401k benefits or matching benefits, or deferred compensation benefits.
17 It is the intent of this Settlement that the individual settlement awards provided for in this
18 Settlement are the sole payments made by Defendant to individuals, and that the individuals are not
19 entitled to any new or additional compensation or benefits as a result of having received the
20 individual settlement payments (notwithstanding any contrary language or agreement in any benefit
21 or compensation plan document that might have been in effect during the period covered by this
22 Settlement).

23 **7. No Admission.**

24 Nothing contained herein, nor the consummation of this Agreement, is to be construed or deemed
25 an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Each of
26 the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further

1 disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement
2 is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or
3 Federal Rule of Evidence 408 and/or any other similar law, be inadmissible in evidence in any
4 proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce
5 this Settlement Agreement.

6 **8. Notices.**

7 Unless otherwise specifically provided herein, all notices, demands or other communications
8 given hereunder shall be in writing and shall be deemed to have been duly given as of the third
9 business day after mailing by United States registered or certified mail, return receipt requested, or
10 on the day of transmission if sent by email, addressed:

11 **To Washburn, the FLSA Collective, and the PAGA Penalties Aggrieved Employees:**

12 Bryan Schwartz
13 Samuel L. Goldsmith
14 Bryan Schwartz Law
15 180 Grand Avenue, Suite 1380
16 Oakland, CA 94612
17 Tele: 510.444.9300
18 Fax: 510.444.9301
19 bryan@bryanschwartzlaw.com
20 samuel@bryanschwartzlaw.com

21 **To Defendant:**

22 Haley M. Morrison (SBN 259913)
23 Email: haley.morrison@tonkon.com
24 Direct: 503.802.2121
25 Megan R. Reuther (SBN 331619)
26 Email: megan.reuther@tonkon.com
Direct: 503.802.2174
Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204
Facsimile: 503.274.8779

1 **9. Construction.**

2 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
3 result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement
4 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
5 any Party or his/her or its counsel participated in the drafting of this Settlement Agreement.

6 **10. Captions and Interpretations.**

7 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
8 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
9 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
10 recital.

11 **11. Modification.**

12 This Settlement Agreement may not be changed, altered, or modified, except in writing and
13 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
14 discharged except by performance in accordance with its terms or by a writing signed by each of
15 the Parties hereto on their attorneys.

16 **12. Integration Clause.**

17 This Settlement Agreement contains the entire agreement between the Parties relating to the
18 settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations, and statements, whether oral or written and whether by a Party or
20 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
21 writing.

22 **13. Binding On Assigns.**

23 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
24 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.
25
26

14. Governing Law.

All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

15. Signatures of All FLSA Collective Members and the PAGA Penalties Aggrieved Employees Unnecessary to be Binding.

It is agreed that it is unnecessary to have each Collective Action Member and PAGA Penalties Aggrieved Employee execute this Settlement Agreement. The FLSA Collective Notice, attached hereto as Exhibit C, will advise all Collective Action Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement was executed by each Collective Action Member. PAGA does not require separate notice.

16. Counterparts.

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

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17. Time Is of The Essence; Default; Cure; Acceleration.

Time is of the essence with respect to each and every term of this Agreement. In the event Defendant fails to timely make any payment due under this Agreement, it shall be in default. Plaintiffs shall provide Defendant with notice of the default, and Defendant shall have five (5) business days to cure the default after notice has been given. In the event of an uncured default, the entire unpaid amount due under this Agreement shall be accelerated and all due and payable, plus interest at the legal rate from the date of the default.

Dated: April ____, 2022.

Apr 7, 2022

By: Julie Washburn
Julie Washburn (Apr 7, 2022 12:36 PDT)Julie Washburn
Plaintiff and Class Representative

Dated: April 7, 2022.

Pendleton Woolen Mills, Inc.

By: Dennis SimmondsIts: Chief Financial Officer**APPROVED AS TO FORM AND CONTENT:**

Counsel for Plaintiff:

Dated: April ____, 2022.

Apr 7, 2022

By: Bryan Schwartz
bryan schwartz (Apr 7, 2022 12:40 PDT)Bryan Schwartz
Bryan Schwartz Law

Counsel for Defendant:

Dated: April 7, 2022.By: Megan Reuther
Megan Reuther
Tonkon Torp, LLP

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EXHIBIT A

Julie Washburn
Alisha Seastone
Angela D'Agostino
Becky Jean Horace
Beverley Bumpas
Cynthia Lyman
Isabelle Totten Jane
Weske Jessica Dega
Kenneth Fraser Lori
Abel Marissa
Pockat Samantha
Vincent Selene
Knight Taylor
Scherer Courtney
Anderson Christy
Lamason Sheila
Bramlet

EXHIBIT B

EXHIBIT B

Angela D'Agostino

Bobbi Witherly

Iris Escalara

Julie Washburn

Margo Seeber

Patricial Wilgus-

Long Steve Aguilar

EXHIBIT C

**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
1-50, inclusive,

Defendants.

Case No. 3:21-cv-06472-VC

**NOTICE OF FLSA COLLECTIVE ACTION
SETTLEMENT AGREEMENT**

Honorable Vince Chhabria

NOTICE OF FLSA COLLECTIVE ACTION SETTLEMENT AGREEMENT

TO: _____

RE: NOTICE OF COLLECTIVE ACTION SETTLEMENT AGREEMENT

This notice is to advise you of a settlement of a FLSA collective action. The case is entitled Washburn v. Pendleton Woolen Mills, Inc., and it was filed in the United States District Court for the Northern District of California. It is referred to in this notice as the "Lawsuit." You are receiving this notice because you filed a form consenting to join the Lawsuit. Pursuant to a Settlement Agreement (the "Agreement"), you are being offered the payment described below in exchange for your agreement to the terms of the Settlement Agreement, including a Release of Claims. This is a settlement of a disputed claim for unpaid overtime compensation, and payments made under this settlement will constitute full payment of amounts allegedly due to you. The settlement of the Lawsuit has been approved by the Court as fair and reasonable.

Settlement Amount and Offer

The total settlement amount of the Lawsuit is \$437,500, which covers a maximum of eighteen Collective Members. The Court has approved Plaintiffs' Counsel's request for 30% of that amount, or \$131,250, as payment for its attorneys' fees. The Court has approved \$9,000 as reimbursement for the costs and expenses of Plaintiffs' Counsel. The Court has also approved a payment of \$5,000 to the Named Plaintiff, on top of her settlement allocation, in recognition for her role as Named Plaintiff and because she has agreed to a broader release of claims. The rest of the \$437,500 settlement amount will be available to for distribution to the Plaintiffs who participate in the settlement.

Your settlement period starts October 27, 2018 and ends as of the date of settlement approval by the Court, _____. According to Defendant's records, you worked _____ workweeks during this time period.

Based on this workweek count, your estimated settlement allocation is \$_____, *after* attorneys' fees and costs. This amount may increase if fewer than eighteen Collective Members participate in this settlement. 33.4% of this amount shall be considered wages, subject to deductions for federal and state taxes and other required withholdings and will be reported by the settlement administrator as wage income on an IRS W-2 form. The other and 66.6% shall be taxable as interest and penalties, for which an IRS Form 1099 shall be issued and no withholdings will be made.

Your Rights in this Settlement

You have the right to accept or reject this settlement:

- To accept the settlement, no action must be taken by you. If you take no action, you will receive a payment and release your claims.
- You can reject the settlement by notifying the attorneys listed below and authorizing them to file a withdrawal of consent on your behalf (see enclosed Withdrawal of Consent form). In order to withdraw consent, you must contact the attorneys by _____ (30 days from the date of settlement approval by the Court). If you reject the settlement, you will receive no money whatsoever from the FLSA settlement agreement.

You may also dispute any of the information listed in this Notice, including your number of workweeks in the settlement period.

If you would like to reject the settlement, dispute any of the information included in this notice, or if you have questions regarding the settlement, or you would like to review the entire Settlement Agreement, please contact the attorneys representing you in this matter:

Bryan Schwartz Law
Samuel Goldsmith
Cassidy Clark
180 Grand Ave., Suite 1380
Oakland, CA 94612
Tel. (510) 444-9300
cassidy@bryanschwartzlaw.com

Release of Claims

In consideration for the payments provided for by the Settlement Agreement, the FLSA Collective waives all federal claims for wages, statutory and civil penalties, damages and liquidated damages, interest, injunctive or equitable relief, fees and costs that were or could have been alleged in the First Amended Complaint ("FAC") based upon the facts pled in the FAC, which arose during a Collective Member's employment, contract, or other work relationship with Defendant during the settlement period. Such claims include the following: federal claims relating to denied overtime compensation and minimum wages, and recordkeeping violations. The settlement also resolves Private Attorneys' General Act claims for several individuals in California.

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS.

THIS NOTICE AND ITS CONTENT HAS BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE VINCE CHHABRIA, UNITED STATES DISTRICT COURT JUDGE.

EXHIBIT D

**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

**PLAINTIFF'S WITHDRAWAL FROM
LAWSUIT**

Judge: Hon. Vince Chhabria

Amended Complaint: October 27, 2021

I hereby revoke my Consent Form and Declaration and withdraw as a Plaintiff from the above-mentioned lawsuit involving claims against Defendants Pendleton Woolen Mills, Inc. for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

I understand that a statute of limitations applies in this case and that as a result of my withdrawal from this lawsuit, the statute of limitations, which was tolled upon filing my Consent Form and Declaration with the Court, will begin to run again upon my withdrawal. I understand that my claims may be barred by the passage of time and that it is advisable that if I intend to further pursue this matter, I should contact another attorney immediately.

Signature and Date:

Mail Fax, or Email To:

**Bryan Schwartz Law
180 Grand Avenue, Suite 1380
Oakland, CA 94612
(510) 444-9301 (fax)
cassidy@bryanschwartzlaw.com**

Print Name:

Address:

Phone: