

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

SHARON WHITELEY, individually and on behalf of  
all others similarly-situated,

Plaintiffs,

v.

THE DRESS BARN, INC., and DOES 1 through 100,

Defendant.

Case No. RG08387868

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT; NOTICE OF SETTLEMENT  
HEARING**

**DATE: MARCH 24, 2010**

**TIME: 3:00 P.M.**

**COURTROOM: THE HONORABLE STEVEN BRICK  
DEPT. 17**

**TO:** All employees of DRESS BARN, INC. ("DRESS BARN") who were employed by DRESS BARN in the State of California in the position of "Store Manager" at any time between January 29, 2005 and July 27, 2008 and were exempt employees paid on a salary basis.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS ARE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. DRESS BARN'S RECORDS SHOW THAT YOU MAY BE ENTITLED TO SHARE IN THE RECOVERY IN THIS ACTION.**

**I. PURPOSE OF THIS NOTICE**

**THIS NOTICE INFORMS YOU OF THE ABOVE-REFERENCED CASE AND A PROPOSED SETTLEMENT ON BEHALF OF THE CLASS OF PERSONS IDENTIFIED ABOVE IN THE FIRST PARAGRAPH. DRESS BARN'S RECORDS INDICATE THAT YOU ARE A MEMBER OF THE CLASS. THIS NOTICE ADVISES YOU OF THE BENEFITS THAT MAY BE AVAILABLE TO YOU UNDER THE PROPOSED SETTLEMENT AND YOUR RIGHTS AND OPTIONS AS A POTENTIAL CLASS MEMBER. IT ALSO NOTIFIES YOU OF COURT HEARINGS THAT WILL BE HELD TO DECIDE WHETHER OR NOT TO APPROVE THE PROPOSED SETTLEMENT.**

**II. THE LITIGATION**

SHARON WHITELEY filed the above lawsuit against Defendant DRESS BARN ("the Action"). The lawsuit alleges that DRESS BARN: (1) misclassified Plaintiffs as exempt from overtime requirements and, therefore, failed to pay Plaintiffs for all overtime to which they might be entitled under California law and the federal Fair Labor Standards Act ("FLSA") and (2) failed to provide meal periods and rest breaks in accordance with California law.

DRESS BARN denies each and every claim and contention of Plaintiffs in this Action and has asserted a number of defenses. Among other things, DRESS BARN asserts that Plaintiffs were properly classified as exempt, that Plaintiffs performed primarily management duties or were reasonably expected to perform primarily management duties, and that Plaintiffs were provided meal periods and rest breaks in compliance with California law. DRESS BARN denies any legal liability or wrongdoing, and denies that Plaintiffs have suffered any damage.

Counsel for Plaintiffs ("CLASS COUNSEL") has extensively investigated the claims, researched the law, and reviewed voluminous documents. Class Counsel recognizes the risks and delays that are present in the litigation and the uncertainty of any possible outcome. Class Counsel believes that the proposed Stipulation and Settlement Agreement of Class Action Claims ("Settlement") is fair, adequate, reasonable, and in the best interests of Plaintiffs.

DRESS BARN likewise recognizes the inherent risks of litigation and the costs of defending itself in the litigation and desires to settle this Action to put to rest any claims that were asserted or could have been asserted in this Action.

### **III. THE PROPOSED SETTLEMENT**

The Parties have agreed to a proposed Settlement which, if approved by the Alameda County Superior Court, will result in the dismissal of this Action with prejudice and the provision of certain benefits to Class Members. DRESS BARN will pay a maximum of \$130,000, which shall be referred to as the "Settlement Fund." The Settlement Fund will include and is made up of the following:

1. The sum of the Gross Settlement Amounts paid to Class Members from a Payout Fund;
2. The payment of attorney's fees to Class Counsel;
3. The payment of a Class Representative Incentive Award to SHARON WHITELEY.

These items will be explained further in the paragraphs that follow.

### **IV. THE CLASS DEFINITION**

The class is defined as all persons who worked for DRESS BARN in the State of California in the position of Store Manager at any time between January 29, 2005 and July 27, 2008 and were paid on an exempt, salaried basis.

### **V. YOUR OPTIONS UNDER THE SETTLEMENT**

You are receiving this Notice because DRESS BARN'S records show that you held the position provided in the Class Definition in Section IV. If these records are correct and you are a member of the class, you have the following options:

1. **DO NOTHING:** If you wish to participate in the Settlement, you are not required to do anything. See Section VI.
2. **OPT-OUT:** You may choose to opt-out of the class. This will be defined further below, but it means that you do not wish to participate in the Class Action. By doing so, you will receive no benefits from the class Settlement. If you then wish to pursue your own action, you must file a separate lawsuit. Note that, depending on the time frame of your employment, certain individual claims may be barred due to the passage of time. See Sections VII, IX, and X.

### **VI. HOW DO I PARTICIPATE IN THE CLASS?**

As a Class Member, you do not need to do anything to participate in the Class Action and receive a Settlement Award. **IF YOU DO NOTHING, YOU WILL RECEIVE A SETTLEMENT AWARD CHECK AND WILL BE BOUND BY THE SETTLEMENT AS TO ALL STATE CLAIMS. YOU WILL LOSE ANY ABILITY TO MAKE A CLAIM UNDER CALIFORNIA LAW. UNDER THE TERMS OF THE SETTLEMENT, IF YOU RECEIVE AND CASH THE SETTLEMENT AWARD CHECK, YOU WILL BE BOUND BY THE SETTLEMENT AS TO BOTH STATE AND FEDERAL CLAIMS. YOU WILL LOSE ANY ABILITY TO MAKE A CLAIM UNDER CALIFORNIA OR FEDERAL LAW.**

If the Superior Court grants final approval of the proposed Settlement, each Class Member shall be paid a Net Settlement Amount by a check from DRESS BARN, together with a withholding statement showing all deductions from the Gross Settlement Amount. The check shall remain valid and negotiable for 90 days and may thereafter be automatically canceled, if not cashed.

### **VII. WHAT IF I DO NOT WANT TO BE A PART OF THE CLASS?**

This question could mean that, for personal reasons (for example, religious, moral, or ethical reasons), you simply do not want to receive the monetary award and do not want to participate in this claim. If that is the case, you should follow the opt-out procedures identified below in Sections IX and X.

This question could also mean that you feel you have claims that you intend to pursue personally and do not wish to receive any of the benefits of the proposed Settlement. If these claims are based on violations of wage and hour laws, then you should use the "Opt-Out" procedures described below in Section X. Note that this Action was filed in 2008, and thus reaches some claims dating back as far as 2005. If you have not filed a claim, there are statutes of limitations that would be applicable to your claim, which will be limited to either three years or four years back from the date you actually file a lawsuit.

If any claims you feel you may have against DRESS BARN have nothing to do with the manner in which you were paid for your hours worked, these claims are not affected by participation in this Settlement.

#### **VIII. WHAT PROTECTIONS DO I HAVE IF I AM A PART OF THE CLASS?**

*You will suffer no adverse action by being a Class Member to this Action.* If you are presently an employee of DRESS BARN, the exercise of your rights under this Settlement will have no effect on your employment. ***DRESS BARN will not retaliate against you due to the fact that you are a Class Member in this Action.*** Under the law, you are protected from discrimination or retaliation based on the fact that you are a Class Member in this Action. Similarly, if you are no longer an employee of DRESS BARN, DRESS BARN cannot legally retaliate against you in references, applications for employment, or any other matter.

#### **IX. WHAT DOES IT MEAN IF I OPT-OUT?**

By opting out, you are signaling that you may wish to pursue your own individual claim for wage and hour violations, though there is not a requirement that you do so.

#### **X. HOW DO I OPT-OUT?**

If you wish to exclude yourself from this Action and the proposed Settlement, you must submit a simple written statement, with your (i) name and former names, if any; (ii) current address; (iii) telephone number; (iv) social security number; (v) dates of employment with DRESS BARN; and (vi) a signed statement that you wish to opt-out from this Action and proposed Settlement. This statement must be postmarked on or before February 22, 2010, and sent by First-Class Mail, with postage prepaid to:

Whiteley v. Dress Barn Claims Administrator  
c/o DESMOND, MARCELLO & AMSTER  
P.O. Box 451999  
Los Angeles, CA 90045

Statements that do not include all of the required information or that are not submitted on a timely basis will be deemed null, void, and ineffective.

#### **XI. WHAT ARE THE PARTICULARS OF THE PROPOSED SETTLEMENT?**

##### **A. THE RELEASE**

The proposed Settlement is pending approval by the court. If the Settlement is approved by the court, all Class Members who do not opt-out will be bound by the terms of the Settlement once a final judgment of the court dismissing the Action is entered and becomes final. If the Settlement is approved, all Class Members will receive a Settlement Award check and will have released DRESS BARN in this Action from all Released State Claims.

The Released State Claims include any and all claims of every nature and description whatsoever, whether known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state constitution, statute, rule or regulation, including state wage and hour laws, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, relating to, or in connection with: any and all facts, transactions,

events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of a claim that DRESS BARN did not comply with state wage and hour laws, including claims: (1) that DRESS BARN did not pay Class Members all amounts due for work that was performed by Class Members for DRESS BARN; and/or (2) that DRESS BARN failed to provide meal periods and rest breaks to Class Members; and/or (3) that DRESS BARN owes wages, commissions, penalties (including but not limited to waiting time penalties, PAGA penalties, and penalties for pay stub violations), interest, attorneys' fees or other damages of any kind based on a failure to comply with any state wage and hour law, at any time on or before the last day of the Class Period; and/or (4) the causes of action asserted in the Action, including any and all claims for alleged failure to pay overtime and, as related to the foregoing, for alleged unlawful, unfair, and/or fraudulent business practices under California Business & Professions Code § 17200, et seq.

Class Members who receive and cash a Settlement Award check will become Settlement Class Members and will have released DRESS BARN in this Action from all Released Federal Claims, in addition to all Released State Claims.

The Released Federal Claims include any and all claims of every nature and description whatsoever 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 federal constitution, statute, rule or regulation, including federal wage and hour laws, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, relating to, or in connection with: any and all facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of a claim that DRESS BARN did not comply with all federal wage and hour laws, including claims: (1) that DRESS BARN did not pay Settlement Class Members all amounts due for work that was performed by Settlement Class Members for DRESS BARN; and/or (2) that DRESS BARN failed to provide meal periods and rest breaks to Settlement Class Members; and/or (3) that DRESS BARN owes wages, commissions, penalties, interest, attorneys' fees or other damages of any kind based on a failure to comply with any federal wage and hour law, at any time on or before the last day of the Class Period; and/or (4) the causes of action asserted in the Action, including any and all claims for alleged failure to pay overtime.

These releases go into effect as of the "Effective Date" of this Agreement, as defined in the Settlement.

RELEASE OF UNKNOWN CLAIMS: These releases encompass a waiver of rights under Section 1542 of the California Civil Code, insofar as it pertains to the Released Claims. California Civil Code section 1542 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 the Settlement with the debtor."

This waiver means that, if Class Members discover facts in addition to or different from those that they know or believe to be true with respect to the subject matter of the Released Federal or State Claims, no further claims may be made.

By participating in this Settlement, Class Members are agreeing not to sue or otherwise make claims against the Released Parties that is in any way related to the Released Federal Claims (for Settlement Class Members) or the Released State Claims (for Class Members and Settlement Class Members).

## **B. ATTORNEY'S FEES**

As part of the preliminary approval of the Settlement, the court has preliminarily approved a fee award to The Law Office of Jerry Budin ("CLASS COUNSEL") for attorney's fees and costs in the prosecution of this case in an amount up to \$32,500. This is the maximum amount to be paid to Class Counsel for this case and Class Counsel may not petition the court for any additional payment of fees or costs. It is anticipated that Class Counsel will continue to work on this case through the administration and final distribution. Payment for attorney's fees shall be paid by DRESS BARN from the Settlement fund, and shall not come out of the Payout Fund, as defined in Section D below. As part of the Settlement, you will not be personally required to pay Class Counsel for representation in this Action.

**C. CLASS REPRESENTATIVE INCENTIVE AWARD**

The court has also preliminarily approved, as part of the Settlement, a Class Representative Incentive Award to SHARON WHITELEY in an amount up to \$10,000, for her time, effort, dedication, and assumption of risk in representing the Class Members, which shall also be paid from the Settlement Fund. This sum is not deducted from the Payout Fund, as defined in Section D below.

**D. THE PAYOUT FUND**

The Settlement Fund has a maximum value of \$130,000. This Notice is being sent following preliminary approval of the proposed Settlement by the court. There will be a hearing for the final approval of the Settlement, as set forth below. Assuming that the court approves the Fees Award and the Class Representative Incentive Award, there will be approximately \$87,500 of the Settlement Fund available to Class Members. This sum is referred to as the "Payout Fund."

**E. GENERAL DESCRIPTION OF DISTRIBUTION FROM THE PAYOUT FUND**

The Payout Fund is earmarked for payments to Class Members. Gross Settlement Amounts of Settlement Awards will be calculated by assigning a certain dollar value to each week of work in an exempt Store Manager position. The amount to be paid per week worked in an exempt Store Manager position will be calculated by dividing the Payout Fund by the number of weeks worked by Class Members in such positions during the Class Period (January 28, 2005 to July 27, 2008). A Class Member's Gross Settlement Amount will be calculated by multiplying the number of work weeks the Class Member spent in an exempt Store Manager position working for DRESS BARN during the Class Period by the dollar value assigned to a work week. If a Class Member worked less than one week during the Class Period, his or her time will be rounded up to one week. DRESS BARN'S records showing the number of weeks worked by each Class Member will be dispositive.

From each Class Member's Gross Settlement Amount, payroll deductions will be made, for state and federal withholding taxes and any other applicable payroll deductions owed by the Class Members as a result of the payment, resulting in a "Net Settlement Amount." The Net Settlement Amount paid to each Class Member is the Class Member's "Settlement Award."

**XII. HOW DO I OBJECT IF I DO NOT THINK THE SETTLEMENT IS FAIR?**

A hearing ("Fairness Hearing") will be held before the Honorable Steven Brick on March 24, 2010 at 3:00 p.m., in Dept. 17, Administration Building, 1221 Oak St., Oakland, California 94612 ("the Court"), to determine whether the proposed Settlement in this Action is fair, adequate, and reasonable. Should the Court make such findings, the Settlement may be approved and a judgment of dismissal with prejudice shall be entered. The hearing may be continued or adjourned by the Court from time to time as the Court may direct (without further notice).

Any Class Member who believes that the Settlement is not fair, adequate or reasonable and should not be approved, or that a final judgment entering dismissal by Settlement should not be entered, may appear in person or through counsel at the Settlement hearing and be heard as to any such objections. Any such person must send written notice to the Court and the Parties of intent to appear at the Fairness Hearing, and shall not be entitled to object or file papers unless such notice of intent to appear at the Fairness Hearing is submitted and filed with the Court and served upon the Parties. Any such papers must be filed with the Court on or before February 22, 2010. Any papers must also be served on the Parties in this case. If served by mail, such opposition papers must be postmarked no later than February 22, 2010. Otherwise, they must be served personally by February 22, 2010. Service shall be made upon the following:

JERRY BUDIN  
THE LAW OFFICE OF JERRY BUDIN  
2401 E. Orangeburg Ave., Ste. 675-309  
Modesto, California 95355  
(Class Counsel)

SAMANTHA D. HARDY  
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP  
501 West Broadway, 19<sup>th</sup> Floor  
San Diego, California 92101-3598  
(Attorneys for Defendant)

Any Settlement Class Member who does not serve his or her written objections in the manner provided above shall be deemed to have waived such objections and is foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

Any Class Member who is satisfied with the proposed Settlement need not file any papers with the Court nor appear at the Fairness Hearing.

**XIII. WHERE CAN I GET MORE INFORMATION?**

This Notice is only a summary of the Action and the proposed Settlement. It is intended to answer your questions and is not comprehensive. For more detailed statements of the matters involved in the Action and the proposed Settlement, you may refer to the files in this matter. This includes the pleadings, a Stipulation and Settlement Agreement, and other papers filed in this case. They may be inspected at the Office of the Clerk, Rene C. Davison Alameda County Courthouse, 1225 Fallon Street, Oakland, California 94612, during regular business hours of each court day or on the court's website at [www.alameda.courts.ca.gov](http://www.alameda.courts.ca.gov).

Additionally, any Plaintiff having an inquiry regarding this Notice and/or the Settlement may directly contact Class Counsel for the Settlement class, Jerry Budin, The Law Office of Jerry Budin, 2401 E. Orangeburg Ave., Ste. 675-309, Modesto, California 95355, telephone no. (209) 544-3030, e-mail: [jerrybudin@msn.com](mailto:jerrybudin@msn.com).

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, THE JUDGE'S DEPARTMENT, DRESS BARN OR DRESS BARN'S ATTORNEYS WITH ANY INQUIRIES.**

DATED: December 23, 2009

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THE HONORABLE STEVEN BRICK  
Superior Court Judge