

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), on behalf of the Indian Arts and Crafts Board ("IACB"), and Pendleton Woolen Mills, Inc. ("Pendleton"). The purpose of this Agreement is to fully and finally resolve all matters between the United States, the IACB, and Pendleton arising from Pendleton's prior sales of the Pendleton Sioux Star Blanket. This Agreement is made with reference to the following:

WHEREAS, the United States and the IACB allege as follows: Starting in 2005, Pendleton marketed on its website the Sioux Star Blanket in a manner that inaccurately suggested that the Pendleton item referred to as the "Sioux Star Blanket" was an Indian product; Pendleton marketed the Sioux Star Blanket in a section of its website labeled "Native American"; the Sioux Star Blanket was named after a well-known Sioux symbol; the website image of the product depicted what appeared to be a genuine Sioux blanket; the accompanying description of the Sioux Star Blanket did not sufficiently make clear that the Blanket was not produced by genuine Indian artisans; and the Sioux Star Blanket did not qualify as an "Indian product" as that term is defined by the Indian Arts and Crafts Act; and

WHEREAS, counsel for Pendleton represented to the United States that, since 2005, Pendleton has sold approximately 570 Sioux Star Blankets through its website with gross sales totaling \$108,290; and

WHEREAS, the United States and the IACB allege that Pendleton's Internet marketing of the Sioux Star Blanket constitutes a violation of the Indian Arts and Crafts Act, 25 U.S.C. § 305e; in order to address this alleged violation, the IACB notified Pendleton by letter on January 12,

2010, that its Internet marketing of the Sioux Star Blanket may be in violation of the Indian Arts and Crafts Act, 25 U.S.C. § 305e, after which Pendleton was notified by the United States that a civil action had been authorized based on an alleged violation of the Indian Arts and Crafts Act, 25 U.S.C. § 305e; and

WHEREAS, in response to requests from the United States, Pendleton altered its Internet marketing of the Sioux Star Blanket by changing the name of the "Native America" section of its website to "Native American Inspired," changing the name of the "Sioux Star Blanket" to the "Plains Star Blanket," and editing the accompanying description of the product to state that it was not an authentic Indian product, along with other changes consistent with the letter and spirit of the Indian Arts and Crafts Act; and

WHEREAS, the United States and the IACB claim that, pursuant to the Indian Arts and Crafts Act, 25 U.S.C. § 305e, for this alleged first-time violation, Pendleton is liable for a penalty of up to, and potentially in excess of, \$1 million, in addition to the costs of the IACB's investigation; and

WHEREAS, although Pendleton disagrees with the claims and liability asserted by the United States and IACB, it is the mutual desire of the parties to this Agreement to resolve all matters arising out of Pendleton's Internet marketing of the Sioux Star Blanket with finality and without the need for litigation.

NOW, THEREFORE, it is agreed as follows:

1. This Agreement is entered into by the parties without any admission of liability by Pendleton or any Pendleton officer, director, employee, or representative.

2. In consideration of this settlement, Pendleton agrees to make, or to maintain, the following changes to its marketing of Native American themed products:

- A. Pendleton will not include a "Native American" section on its website, in its print catalogs, or in materials provided to retailers. Pendleton may include a section named or referred to as "Native American Inspired" in any of these marketing materials;
- B. To the extent that Pendleton sells the product previously named the "Sioux Star Blanket," it will be named the "Plains Star Blanket";
- C. Pendleton's Native American Inspired product descriptions will make clear that its products are not Indian products; and
- D. Pendleton agrees to not include any federally recognized Native American tribal name in any of its product names without express authorization from such Native American tribe. Notwithstanding the foregoing, Pendleton may use geographic designations such as cardinal directions, names of State, or names of geographic landmarks, and such use shall not violate this agreement, even if such geographic designations may also be contained in the name of a federally recognized Native American tribe. Moreover, nothing in this agreement shall be construed to prevent accurate, descriptive, or fair references to such tribes or the use of same in language used to describe a product. Any such use of a federally recognized Native American tribe name shall be in accordance with the Indian Arts and Crafts Act.

3. In further consideration of this settlement, Pendleton agrees that, not later than thirty (30) days after execution of this Agreement, and for a minimum of two (2) years following execution of this Agreement by all parties, it shall include the following paragraph (hereinafter referred to as the "Paragraph") in its print catalogs, on its website, and in marketing material it distributes to retailers of its Native American Inspired products:

The Indian Arts and Crafts Act of 1990 (P.L. 101-644), as amended, is a truth-in-marketing law that prohibits the offer or display for sale, or sale, of any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian Tribe. Covering all traditional and contemporary American Indian and Indian-style art and craftwork produced after 1935, the Act carries both criminal and civil penalties. For more information on the Act, please visit www.iacb.doi.gov.

- A. Pendleton agrees to include the Paragraph in all of its print catalogs containing Native American Inspired Products. The design, placement, and size of the Paragraph will be consistent with other text in Pendleton's print catalogs that explains the history and nature of the company.
 - B. Pendleton agrees to include the Paragraph on a separate page within its website labeled "Indian Arts and Crafts Act." The design, placement, and size of the Paragraph will be consistent with other text on Pendleton's website that explains the history and nature of the company. A link to the "Indian Arts and Crafts Act" will be included under the "Native American Inspired" heading Pendleton's website, as well as at the bottom of the page of any product contained within the "Native American Inspired" section of the website.
 - C. Pendleton agrees to include the Paragraph in marketing materials sent to its retailers of Native American Inspired products. The design, placement, and size of the Paragraph will be consistent with other text in Pendleton's print catalogs that explains the history and nature of the company.
4. In further consideration of this settlement, Pendleton agrees that, no later than thirty (30) days following execution of this Agreement by all parties and their respective counsel, it will donate to the Red Cloud Indian Heritage Center in Pine Ridge, South Dakota (RCIHC) an amount of Forty-One Thousand, Two Hundred and Fifty dollars (\$41,250);

5. This Agreement settles any and all existing and potential enforcement actions, civil actions, allegations, and claims arising out of Pendleton's marketing of the Sioux Star Blanket. This Agreement may be pleaded as a complete defense to, and may be used as a basis for an order dismissing any administrative action, enforcement action, or civil claim against Pendleton brought by the IACB or the United States, arising out of Pendleton's marketing of the Sioux Star Blanket.

6. Notwithstanding any other provisions of this Agreement, it is understood that, if the United States determines that Pendleton, or any of its employees, has knowingly given false, incomplete, or misleading information in the negotiations of this Agreement or in the investigation that led to this Agreement, Pendleton and/or its employees may be subject to criminal or civil proceedings.

7. Pendleton and the United States agree that neither party nor their successors or assigns will commence or pursue any action or claim against the other party or any of their officials, representatives, officers, or employees, or former officials, representatives, officers, or employees, in connection with this matter.

8. This Agreement was negotiated and drafted jointly by counsel for all parties hereto and shall be interpreted fairly and not against any party as the drafter thereof.

10. This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, supersedes all prior negotiations and proposed agreements, written and oral, and represents the final disposition of any and all matters, allegations, and claims arising out of Pendleton's marketing of the Pendleton Sioux Star Blanket.

No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can be modified only in a writing signed by the parties.

11. This Agreement may be executed in two or more counterparts, including photocopies, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

DATED: ~~September~~ ^{December} 9, 2013.

UNITED STATES OF AMERICA

By: *Patricia Whiff*

DATED: ~~September~~ ^{December} 9, 2013.

THE INDIAN ARTS AND CRAFTS BOARD

By: *Merideth L. Searson*

DATED: September 11, 2013.

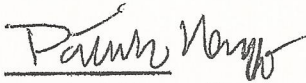
PENDLETON WOOLEN MILLS, INC.

By: *Com. Bentley III*

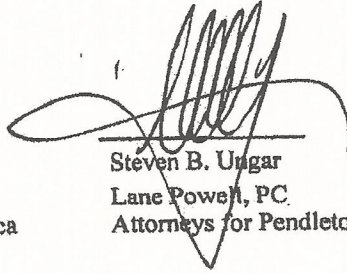
APPROVED AS TO FORM AND CONTENT:

DATED: ^{December 9} September 9, 2013.

DATED: September 12, 2013.



Patrick G. Nemeroff
United States Department of Justice
Attorney for the United States of America
and the Indian Arts and Crafts Board



Steven B. Ungar
Lane Powell, PC
Attorneys for Pendleton Woolen Mills, Inc.