

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

Willie Lopez, et al. v. Lowe's HIW, Inc., et al. Case Number BC 260702

NOTICE OF CLASS ACTION SETTLEMENT

TO: All persons who, at any time from October 29, 1997, through and including April 23, 2009 have been or were employed or are currently employed in an hourly (or non-exempt) position by Lowe's HIW, Inc. ("Defendant" or "Lowe's") in Lowe's retail stores in the State of California.

On April 23, 2009, the Court in this action granted preliminary approval of a proposed settlement as set forth in a Class Action Settlement Agreement ("Settlement Agreement"). You are receiving this Notice because if the settlement is granted final approval by the Court, you as a class member will have the right to be paid a share of the settlement funds. This action will be dismissed with prejudice, and Defendant will be released from all claims raised in or related to those actions including, among others, claims under California's wage and hour laws and claims under the federal Fair Labor Standards Act. The Class Representative and Class Counsel (as defined below) believe the proposed settlement is fair, adequate, and reasonable and in the best interest of the Plaintiff Class (as defined below). This Notice informs you of the proposed settlement and its terms and your rights to participate in the proposed settlement, to object to the terms of the proposed settlement, and whether you may exclude yourself from the proposed settlement. This Notice also explains how you can obtain more information about the settlement.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.

I. SUMMARY OF THE LAWSUIT

Plaintiff Willie Lopez ("Plaintiff") and Defendant are parties to *Willie Lopez, et al. v. Lowe's HIW, Inc., et al.*, Los Angeles Superior Court case number BC 260702 (the "Lawsuit") pending in the Superior Court of the State of California for the County of Los Angeles. The Lawsuit was originally filed on October 29, 2001, and originally captioned as *Cynthia Parris v. Lowe's HIW, Inc. et al.* The Lawsuit is now pending before the Honorable Aurelio N. Munoz, Judge (referred to in this Notice as the "Court").

The Lawsuit seeks recovery of wages, penalties, and related amounts that Plaintiff contends are owed to all current and former hourly employees who worked for Defendant in its retail stores in California from **October 29, 1997, to April 23, 2009**. The Court has certified a class action in the Lawsuit. Members of the class have an opportunity to exclude themselves from the Lawsuit and the Settlement, as described below. The Court has not rendered any decisions on the merits of the Lawsuit.

During the Lawsuit, attorneys for the Plaintiff Class and attorneys for Defendant engaged in mediation with an experienced mediator, Hunter R. Hughes, III. In addition, counsel for the parties have engaged in numerous discussions in an attempt to resolve the Lawsuit. The parties have reached an agreement to settle the Lawsuit, subject to the approval of the Court.

II. CLASS DEFINITION

The Lawsuit is being settled as a "class action." In a class action, the plaintiff, also referred to as class representative, sues on behalf of himself and other persons with similar claims.

The Court has certified a class in this Lawsuit. The class ("Plaintiff Class") is defined as follows:

The Plaintiff Class is comprised of all persons who, at any time from October 29, 1997 through and including April 23, 2009, (the "Class Period"), have been or were employed or are currently employed in an hourly (or non-exempt) position by Lowe's HIW, Inc. in Lowe's retail stores in the State of California.

If the Court approves the settlement, the settlement will bind all members of the Plaintiff Class who have not excluded themselves from the Plaintiff Class. If the Court does not approve this settlement, all current members of the certified class will

Questions? Please Call 1-888-266-9440

remain class members, but the Settlement Agreement will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

III. CLASS REPRESENTATIVE AND CLASS COUNSEL

The Court has appointed Plaintiff Willie Lopez as “Class Representative” to represent the Plaintiff Class.

In its Preliminary Order Approving the Settlement, the Court appointed the following attorneys to represent the Plaintiff Class as “Class Counsel”:

Stanley D. Saltzman, Esq.
 Louis M. Marlin, Esq.
 Marcus J. Bradley, Esq.
 Marlin & Saltzman
 29229 Canwood Street, Suite 208
 Agoura Hills, California 91301
 818.991.8080

R. Rex Parris, Esq.
 R. Rex Parris Law Firm
 963 West Avenue J.
 Lancaster, CA 93534
 661.949.2595

IV. SETTLEMENT AMOUNT

The proposed settlement obligates Defendant to pay a potential maximum settlement amount (called the “Maximum Settlement Amount” in the Settlement Agreement) of Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000). The payment by Defendant shall be “all inclusive,” including: unpaid wages due, claims for off the clock hours worked, and any wages, penalties, or damages associated with or related to the alleged failure to pay for all time worked, including possible penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”); unpaid overtime pay, and any wages, penalties, or damages associated with or related to the alleged failure to pay overtime, including possible penalties under the PAGA; pay for rest breaks and/or meal periods (collectively “Breaks”), and any wages, penalties, or damages associated with or related to the alleged failure to provide uninterrupted Breaks, including possible penalties under the PAGA; any restitution under California Business and Professions Code Section 17200 *et seq.*; interest, attorneys’ fees, costs, and expenses, as approved by the Court; all of the fees, costs and expenses of the Administrator in connection with settlement and claims administration including any fees, costs, and expenses in connection with notice, the claims process, and the exclusion process; settlement payments; incentive payment to Plaintiff, as approved by the Court; employee-paid withholding and payroll taxes (including state and federal income taxes, social security contributions and unemployment taxes); and all other settlement-related payments and costs.

In addition to the Maximum Settlement Amount, Defendant shall be responsible for paying all employer-paid withholding and payroll taxes and similar expenses (including state and federal income taxes, social security contributions and unemployment taxes) including FUTA and the employer’s share of FICA and Medicare taxes as required by law with respect to settlement payments to members of the Plaintiff Class. The members of the Plaintiff Class will be responsible for their own tax obligations.

V. SETTLEMENT ADMINISTRATOR

The settlement process will be administered by Epiq Systems (the “Administrator”), a company that provides settlement and claims administration services. The Court has approved Epiq Systems to act as the Administrator for purposes of this settlement. All of the costs and fees of the Administrator shall be paid out of and subtracted from the Maximum Settlement Amount.

VI. THE CLAIMS PROCESS

Enclosed with this Notice you will find a Claim Form. If you want to be eligible to receive a payment as part of this settlement, you must submit a Claim Form. To complete the Claim Form, you must declare under penalty of perjury that you performed work off the clock and/or were not paid straight time wages or overtime wages while working for Defendant as a member of the Plaintiff Class during the Class Period. For the purposes of this settlement, “off the clock” includes time spent helping customers before you clocked in or after you clocked out, being “locked in” the store at the end of a shift, having a meal or rest break interrupted, and any other time spent under the Defendant’s control when not clocked in during the Class Period. **If you do not properly complete and mail in a Claim Form in a timely manner, you will not receive any payment under the settlement.**

THE CLAIM FORM MUST BE COMPLETED, SIGNED UNDER PENALTY OF PERJURY, AND RETURNED TO THE SETTLEMENT ADMINISTRATOR APPROVED BY THE COURT, AT THE ADDRESS SET FORTH BELOW

Questions? Please Call 1-888-266-9440

WITHIN 90 DAYS OF THE DATE THAT THIS NOTICE AND THE CLAIM FORM WERE MAILED TO YOU. THEREFORE, FOR YOUR CLAIM TO BE CONSIDERED TIMELY, YOUR CLAIM FORM MUST BE POSTMARKED NO LATER THAN SEPTEMBER 2, 2009. CLAIMS POSTMARKED AFTER THAT DATE BUT WITHIN 180 DAYS THEREAFTER, MAY BE SUBJECT TO REJECTION IN THE DISCRETION OF THE CLAIMS ADMINISTRATOR WHO SHALL HAVE EXCLUSIVE JURISDICTION TO DETERMINE WHETHER THERE IS GOOD CAUSE TO PAY UNTIMELY CLAIMS. CLAIMS RECEIVED AFTER 180 DAYS WILL AUTOMATICALLY BE REJECTED.

Claim Forms must be mailed to:

Lopez v. Lowe's HIW Settlement, P.O. Box 4098, Portland OR, 97208-9620

Please follow the directions on the Claim Form carefully. If you require assistance, you may contact the Administrator at 1-888-266-9440 or Class Counsel at the addresses and telephone numbers set forth above in Section III of this Notice. As used in this Notice and the Settlement Agreement, a member of the Plaintiff Class who submits a timely Claim Form is called a "Settlement Class Member."

After you have submitted your Claim Form, postmarked by the deadline stated above, you may verify that your Claim Form was timely received by the Administrator by checking the status of your Claim Form on the Administrator's website, www.lopezylowesettlement.com or by calling 1-888-266-9440.

VII. RELEASE AND WAIVER

If the Court approves the settlement, then upon the effective date of the settlement, the Class Representative and all members of the Plaintiff Class (i) shall be deemed to have agreed that, except for the obligations imposed by this settlement, Defendant shall be forever released and discharged from all Released Claims (as defined below) and (ii) shall be barred and enjoined from suing the Released Parties (as defined below) for any liability in any way related to or arising out of any Released Claim.

For purposes of the Settlement Agreement, the "Released Claims" are defined as: All claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, whether known or unknown, that were or could have been asserted in the Lawsuit, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, including state and federal wage and hour laws (including California Labor Code sections 200, 203, 204, 218, 226, 226.7, 500, 510, 1197 or PAGA, and the FLSA, 29 U.S.C. section 201, *et seq.*), whether for economic damages, non-economic damages, restitution, penalties, wages, or liquidated damages, arising out of the claims at issue, including: the causes of action asserted in the Complaint for alleged failure to pay any wages, including overtime compensation, penalties, interest, fees and costs arising out of alleged work performed "off the clock" (i.e., when not "clocked in"), which causes of action include, but are not limited to, allegations that members of the Plaintiff Class helped customers before they clocked in and after they clocked out, allegations that employees were "locked in" the store at the end of their shift, allegations that employee Breaks were interrupted, and any other allegations where employees worked and/or were subject to Defendant's control when not clocked in during the Class Period; causes of action for alleged failure to pay compensation at the time of discharge and related violations of Wage Orders, for waiting time penalties; and as related to the foregoing, the cause of action for alleged unlawful, unfair and/or fraudulent business practices under California Business and Professions Code section 17200, *et seq.*

For purposes of the settlement, "Released Parties" means Lowe's HIW, Inc. and each of its respective past, present and future owners, stockholders, parent corporations, related or affiliate companies, subsidiaries, officers, directors, shareholders, employees (including Defendant John Patton), agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant.

With respect to the Released Claims only, the members of the Plaintiff Class stipulate and agree that, upon the Effective Date, the members of the Plaintiff Class 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 that purports to limit the scope of a general release. 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 HIS OR HER SETTLEMENT WITH THE DEBTOR.

The members of the Plaintiff Class further stipulate and agree that the consideration paid to the members of the Plaintiff Class pursuant to the Settlement Agreement compensates the Plaintiff Class for all wages due to them arising out of the allegations of the complaint and those released herein, all penalties, all liability for off the clock work, Breaks and any compensation to which they may be entitled as a result of the alleged labor code violations, and any related penalties and as such, the members of the Plaintiff Class are not “aggrieved employees” for purposes of the PAGA, and, therefore, Defendant is not liable for any penalties pursuant to the PAGA. The members of the Plaintiff Class further stipulate and agree that even if any member of the Plaintiff Class is considered or determined to be an “aggrieved employee” for purposes of the PAGA, said member of the Plaintiff Class waives any potential right to any penalty prescribed by the PAGA, the California Labor Code or the applicable Wage Order in connection with the Labor Code violations alleged in the Lawsuit.

VIII. ATTORNEYS’ FEES

Class Counsel have litigated this matter since October 29, 2001. It is customary for courts to award to class counsel attorneys’ fees based upon a percentage of the potential maximum settlement amount for the benefit of a class. In this case, Class Counsel will request an award of 33 1/3% (\$9,833,333.34) of the Maximum Settlement Amount. Class Counsel will also seek reimbursement of the costs and expenses they have incurred on behalf of the Plaintiff Class, estimated to be no more than \$300,000, to be paid from the Maximum Settlement Amount.

IX. INCENTIVE AWARD

Plaintiff will request the Court to approve an incentive award of \$50,000 to be paid from the Maximum Settlement Amount.

X. CALCULATION OF PAYMENTS

All settlement administrative fees and costs, the incentive award to the Class Representative, the attorneys’ fees and costs that the Court awards to Class Counsel, and other associated expenses shall be subtracted from the Maximum Settlement Amount. The funds remaining after payment of all of these amounts are designated as the “Potential Gross Individual Settlement Proceeds,” which is the amount available for distribution to Settlement Class Members, *i.e.*, members of the Plaintiff Class who submit completed, signed Claim Forms to the Administrator on a timely basis. The amount available for distribution to each member of the Plaintiff Class shall be calculated based upon a formula set forth in paragraph 7(c) of the Settlement Agreement:

1. **Individual Settlement Award:** Based upon the preliminary calculations, a class member can expect to receive approximately \$103 (before taxes) for every \$10,000 that the class member earned during the class period.

The Individual Settlement Awards payable to Settlement Class Members will be allocated as follows: twenty-five percent (25%) to alleged unpaid wages for overtime which will be reported to the IRS on Form W-2; and seventy-five percent (75%) to alleged interest and alleged penalties which will be reported to the IRS on Form 1099. Defendant reserves the right to alter these percentages depending upon its review of the tax treatment of the foregoing.

2. **Claimed Settlement Amount; Unclaimed Amount:** The total Individual Settlement Awards claimed by Settlement Class Members shall be the “Claimed Settlement Amount”. If each and every member of the Plaintiff Class is a Settlement Class Member, then the Claimed Settlement Amount shall equal the Potential Gross Individual Settlement Proceeds and all Individual Settlement Awards shall be distributed to all members of the Plaintiff Class. Any member of the Plaintiff Class who does not become a Settlement Class Member shall not receive any Individual Settlement Awards or any Claimed Settlement Amount. Any portion of the Potential Gross Individual Settlement Proceeds that is not distributed to Settlement Class Members shall be retained by Defendant.

3. **Tax Liability and Net Payments:** The payment by Defendant pursuant to the settlement is for alleged failure to pay compensation due, interest on said sum, penalties, and all other claims as set forth in the Complaint. In accordance with both State and Federal tax laws, Defendant shall withhold such sums from each Settlement Class Member’s Individual Settlement Award as is required in order to comply with the same. Portions of any Individual Settlement Award not subject to withholding will be issued with a 1099 form. After appropriate tax withholding, the net payment to be received by each Settlement Class Member shall be designated as the “Net Payment”, and said sum shall be paid as provided in the Settlement Agreement. Defendant shall report the taxes withheld from the wages of each Settlement Class Member as required by law via a W-2 form, and shall immediately pay over all such withheld funds, plus the employer’s contribution, to the appropriate State and Federal taxing authorities. Defendant shall provide each

Settlement Class Member with appropriate documentation setting forth the amount of any tax or other payment withheld, and employer contribution made, in accordance with State and Federal tax requirements. In addition, Defendant shall provide such information to the Administrator and to Class Counsel. Settlement Class Members shall be responsible for remitting to State and/or Federal taxing authorities any applicable other taxes due and shall hold Defendant harmless and indemnify it for any liabilities, costs and expenses, including attorneys' fees, assessed or caused by any such taxing authority relating in any way to the tax treatment of the payments made pursuant to the Settlement Agreement.

4. Payment of Settlement Funds Will Be Considered By Defendant As Having No Effect on Any Employee Benefit Plan and Similar Plans: The payment to any member of the Plaintiff Class as provided for in the Settlement Agreement is not and shall not be deemed by Defendant to constitute an addition to, a modification of, or a change in any previously credited hours of service, compensation and/or wages under any employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Any such payment to any member of the Plaintiff Class shall not be considered by Defendant to form the basis for additional contributions to, additional benefits under, or any other additional entitlements under any employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Defendant and each of its present and former parent corporations and affiliates retain the right to modify and/or amend the language of their employee benefit plans, employment policies, and stock option plans, and to seek to have modified and/or amended the language of any jointly trustee benefit plans, to make clear that any amounts paid as a result of the Settlement Agreement are not considered by Defendant as compensation or wages, or payments for "hours worked," as defined by the applicable plans and policies, and that no additional contributions or benefits will be provided by Defendant by reason of the settlement. Plaintiff takes no position on the issues in this section.

XI. SETTLEMENT APPROVAL HEARING

A hearing (the "Settlement Approval Hearing") has been scheduled on **September 21, 2009, at 8:30 AM** before the Court, the Honorable Aurelio N. Munoz presiding, in department 47 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable and adequate to members of the Plaintiff Class; (2) whether the application of Class Counsel for an award of attorneys' fees and expenses should be approved and in what amount; (3) whether the application for an incentive payment for Plaintiff should be approved and in what amount; and (4) whether a proposed Final Approval Order should be entered and recommended to the Court.

You Are Not Required To Attend The Settlement Approval Hearing.

You are welcome to attend the Settlement Approval Hearing, at your own expense. You may request permission to speak to the Court at the Settlement Approval Hearing. You may hire your own attorney at your own expense to speak at the Settlement Approval Hearing. If you want to speak at the Settlement Approval Hearing, you must ask the Court for permission. To do so, send a letter to the Court (at the address set forth above in this Section of this Notice) with a copy to the Administrator (at the address set forth in Section VI of this Notice), Class Counsel and Defendant's counsel (at the addresses set forth Section XIII of this Notice) no later than **August 3, 2009**, requesting permission to speak at the Settlement Approval Hearing. Such letter should be signed and should contain a brief statement of the position that you wish to put before the Court at the Settlement Approval Hearing and the basis for that position. The Court may, or may not, grant the request.

If the Court issues a proposed Final Approval Order, the parties will jointly seek the Court's approval and adoption of the Final Approval Order and a dismissal of the Lawsuit with prejudice.

XII. RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

You may exclude yourself from the Plaintiff Class. To do so, you must complete and sign the Request for Exclusion Form and return it to the Administrator at the address set forth above in Section VI of this Notice, postmarked no later than **August 3, 2009**. If you request to be excluded from the settlement, you will not receive any cash payment from the settlement, and you will not release any claims.

Any member of the Plaintiff Class who does not provide the Administrator with a timely Request for Exclusion Form shall be bound by all the terms and conditions of the settlement, including, without limitation, the releases provided for in the Settlement Agreement and any Final Judgment entered by the Court, whether or not that member of the Plaintiff Class submits a Claim Form.

XIII. RIGHT TO OBJECT TO THE SETTLEMENT

You have the right to object to the settlement. To do so, you must file with the Court and serve on Class Counsel and Defendant's counsel (at the addresses set forth below), no later than **August 3, 2009**, a written statement stating your objection to the settlement and the basis for your objection, along with any and all documents that support your objection. No member of the Plaintiff Class shall be entitled to be heard at the Settlement Approval Hearing or object to the settlement, and no written objections or briefs submitted by any member of the Plaintiff Class shall be received or considered by the Court at the Settlement Approval Hearing, unless written notice of the member of the Plaintiff Class's intention to appear at the Settlement Approval Hearing, and copies of any written objections or briefs, shall have been filed with the Court and served on Class Counsel and Defendant's counsel on or before **August 3, 2009** as follows:

Class Counsel:

Stanley D. Saltzman, Esq.

Louis M. Marlin, Esq.

Marcus J. Bradley, Esq.

Marlin & Saltzman

29229 Canwood Street

Suite 208

Agoura Hills, California 91301

Tel. 818.991.8080

Fax 818.991.8081

R. Rex Parris, Esq.

R. Rex Parris Law Firm

963 West Avenue J.

Lancaster, CA 93534

Tel. 661.949.2595

Fax 661.949.7524

Defendant's Counsel:

Phillip J. Eskenazi, Esq.

Hunton & Williams LLP

550 South Hope Street

Suite 2000

Los Angeles, CA 90071

Tel. 213.532.2000

Fax 213.532.2020

Members of the Plaintiff Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections to the settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses.

XIV. REMINDER OF IMPORTANT SETTLEMENT DATES AND DEADLINES

The following are important dates and deadlines under the proposed settlement:

Objection Deadline:	August 3, 2009
Exclusion Deadline:	August 3, 2009
Proof of Claim Deadline:	September 2, 2009
Settlement Approval Hearing:	September 21, 2009

XV. AVAILABILITY OF COMPLETE SETTLEMENT AGREEMENT

This Notice contains a summary of the proposed settlement contained in the Settlement Agreement that is on file with the Clerk of the Central Division of the Court. The complete Settlement Agreement may be inspected during normal business hours at the offices of the Clerk, and it may be viewed and downloaded at the website, www.lopezvlowessettlement.com.

XVI. ADDITIONAL INFORMATION

For more detailed information concerning the matters involved in the Lawsuit, please refer to the pleadings, the Settlement Agreement, the Orders entered by the Court in the Lawsuit, and to the other papers filed in the Lawsuit, which may be inspected at the office of the Clerk of the Central Division of the Superior Court of the County of Los Angeles, State of California, during regular business hours. In addition, the operative Complaint, the Settlement Agreement, and all Notice and Claim Forms, may be viewed and downloaded at the website www.lopezvlowessettlement.com. Any questions concerning the matters contained in this Notice may be directed to the Administrator or Class Counsel (at the addresses set forth above in Section III and Section VI of this Notice). You may also seek the advice and counsel of your own attorney, at your own expense, if you desire.

Do Not Call Or Write The Court To Obtain Copies of Documents Or To Ask Questions About The Settlement.