

APR 28 2009

John A. Clarke, Executive Officer/Clerk

REC'D By: A. E. ... Deputy

APR 13 2009
FILING WINDOW

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

14 CYNTHIA PARRIS and WILLIE LOPEZ, on
15 their own behalf and on behalf of all others
16 similarly situated,,

17 Plaintiff,

18 v.

19 LOWE'S H.I.W. INC., a Virginia
20 Corporation; JOHN PATTON; and DOES 1
through 50,
inclusive,

21 Defendants,

CASE NO. BC260702

Class Action

(Assigned to Hon. Aurelio N. Munoz,
Dept. 47, for all purposes)

~~(Proposed)~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

DATE: April 23, 2009
TIME: 8:30 a.m.
DEPT: 47

Complaint filed: October 29, 2001
Trial Date: May 12, 2009

25 On April 23, 2009, the Court heard a motion by Plaintiff Willie Lopez ("Plaintiff"),
26 individually and on behalf of the certified class, for preliminary approval of a proposed class
27 action settlement. The Court has considered the Settlement Agreement ("Settlement"), the
28 proposed Notices (3) of Class Action Settlement ("Notice of Settlement"), the proposed Claim

1 Form, Exclusion Form, and Opt-In Form, as well as the papers submitted in connection with the
2 motion, and good cause appearing therefore, the Court now FINDS and ORDERS as follows:

3 1. Pursuant to the Settlement Agreement, the certified class is defined as follows,
4 and the Court approves said class definition:

5 **All persons who, since October 29, 1997, have been employed or are**
6 **currently employed in an hourly (or non-exempt) position by Lowe's HIW,**
Inc. in Lowe's retail stores in the State of California.

7 2. The Court finds on a preliminary basis that the proposed Settlement described in
8 the Settlement Agreement (including the proposed award of attorneys' fees, litigation costs, and
9 Class Representative's Service Payments) falls within the "range of reasonableness" and
10 therefore grants preliminary approval of the Settlement. Based on a review of the papers
11 submitted by the Parties, the Court finds that the Settlement is the result of arms-length
12 negotiations conducted after Class Counsel had thoroughly and adequately investigated the
13 claims and became familiar with the strengths and weaknesses of those claims. The assistance of
14 an experienced negotiator in the settlement process supports the Court's conclusion that the
15 Settlement is non-collusive.

16 3. The Court finds and concludes that the Notices of Settlement and Claim Form and
17 the procedure set forth in the Settlement Agreement for providing notice to the Class will provide
18 the best notice practicable, satisfies all notice requirements, adequately advises Class Members
19 of their rights under this Settlement, and therefore meets the requirements of due process.

20 a. Notice of Settlement: The Notice of Settlement fairly, plainly, accurately,
21 and reasonably informs Class Members of: (1) appropriate information about the nature of this
22 Action, the definition of the Class, the identity of Class Counsel, and the essential terms of the
23 Settlement, including the plan of allocation; (2) appropriate information about Plaintiff's and
24 Class Counsel's forthcoming applications for the Class Representatives' Service Payments and
25 the Class Counsel attorneys' fees and litigation costs award; (3) appropriate information about
26 how to claim a share of the proceeds under the Settlement, and about Class Members' rights to
27 appear through counsel if they desire; (4) appropriate information about how to object to the
28 Settlement or submit an Opt Out Request, if a Class Member wishes to do so; and (5) appropriate

1 instructions as to how to obtain additional information regarding this Action and the Settlement.
2 The proposed plan for mailing the Notice of Settlement and the Claim Form by first class mail to
3 Class Members' last known addresses is an appropriate method, reasonably designed to reach all
4 individuals who would be bound by the Settlement. The Claims Administrator will distribute the
5 Notice of Settlement and the Claim Form to all Class Members by first class mail to their last
6 known addresses, after seeking updated addresses from the U.S. Postal Service for the Class
7 Members who formerly performed work for Lowe's as an hourly paid non-exempt employee in
8 the retail stores. If the notices are returned as undeliverable, the Claims Administrator will use
9 Class Members' social security numbers to obtain updated addresses through a skip tracing
10 process. The proposed Notice of Settlement and notice plan are the best practicable notice under
11 the facts and circumstances of this case.

12 b. Claim Form: The proposed Claim Form allows Class Members a full and
13 fair opportunity to submit a claim for proceeds under the Settlement. The Claim Form fairly,
14 accurately, and reasonably informs Class Members that the failure to complete and submit a
15 Claim Form, in the manner and time specified, will constitute a waiver of any right to obtain any
16 share of the proceeds under the Settlement.

17 The Notice of Settlement and Claim Form (collectively, with a self-addressed
18 return envelope, "Notice Packet") and the manner of distributing the Notice of Settlement and
19 Claim Form to the Class are approved.

20 4. The Parties are ordered to carry out the Settlement according to the terms of the
21 Settlement.

22 5. The Court appoints Epiq Systems Class Action & Claims Solutions, Inc., as the
23 Claims Administrator. Promptly following the entry of this order, the Claims Administrator will
24 prepare final versions of the Notice Packets, incorporating into them the relevant dates and
25 deadlines set forth in this order.

26 6. Within twenty one (21) business days of Lowe's receipt of notice of the
27 Preliminary Approval Date, Lowe's will provide to the Claims Administrator, in electronic form,
28 a spreadsheet or database containing the names, last known addresses, telephone numbers, and

1 social security numbers of the Class Members. ("Database"). This Database shall be based on
2 Lowe's payroll and personnel records and in a format acceptable to the Claims Administrator.
3 The Claims Administrator shall maintain this Database, and all data contained within this
4 Database, as private and confidential. Neither Class Counsel nor the Claims Administrator may
5 use the Database for any purpose other than to administer the Settlement as provided herein.

6 7. Within fifteen (15) business days after receipt of the Database from Lowe's, the
7 Claims Administrator, after conducting a search using the U.S. Post Service National Change of
8 Address database to validate or update the addresses of the Class Members, shall send the Notice
9 Packets to all Class Members via first class U.S. Mail.

10 8. The Claims Administrator is directed to mail the Notice Packets in the manner
11 provided in the Settlement Agreement and take all other actions in furtherance of claims
12 administration as specified in the Settlement Agreement.

13 9. Class Members who wish to receive a portion of the Settlement Proceeds must
14 complete and return a timely Claim Form to the Claims Administrator, either in the stamped self-
15 addressed envelope which is being provided to all Class Members, or via other means of mailing.
16 The mailing deadline for submitting a Claim form is ninety (90) calendar days after the mailing
17 of the Notice Packets, as evidenced by the postmark.

18 10. A Class Member may challenge the number of weeks of service he or she
19 provided to Lowe's during the Class Period by writing on the Claim Form the number of weeks
20 he or she contends is correct, and by submitting supporting documentation. The personnel and
21 payroll records provided by Lowe's shall be rebuttably presumed to be correct for determining
22 the number of weeks of service as a Class Member, and also for purposes of determining if a
23 claimant is a Class Member. If the Class Member does not provide any documents or other
24 evidence, the records of Lowe's shall be presumed to be correct. All disputes will be resolved at
25 the exclusive authority of the Claims Administrator after seeking input from counsel for the
26 Parties. The Claims Administrator's decision shall be binding and non-appealable by the
27 Plaintiff, Defendants, or the Class Members. Lowe's will promptly provide any information or
28 documents reasonably requested by the Claims Administrator to make its determination.

1 11. All objections to the Settlement must be in writing and be served and filed with
2 the Court within ~~forty-five~~⁶⁰ (45) days after the initial mailing of the Notice Packets by the Claims
3 Administrator. All objections must be served on the Claims Administrator, Class Counsel and
4 Defendants' Counsel, and filed with the Court. Only Class Members who do not submit Opt Out
5 Requests may file objections. The date of filing shall be the exclusive means for determining
6 whether an objection has been timely filed. An objection must include the name and number of
7 the case, the identity of the objector, and a statement of the reasons why the objector believes that
8 the Court should find that the proposed Settlement is not in the best interest of the Settlement
9 Class, and the reasons why the Settlement should not be approved. If an objector also wishes to
10 appear at the Final Approval Hearing, in person or through an attorney, he or she *must* also
11 submit a *Notice of Intention to Appear* at the same time as the objection is filed with the Court
12 and served on the Claims Administrator, Class Counsel, and Defendants' Counsel. The Notice
13 of Settlement shall advise Class Members of this option.

14 12. A Claim Form that is not postmarked by within ninety (90) days after the initial
15 mailing of the Notice Packets by the Settlement Administrator shall be considered a late claim.
16 The Claims Administrator shall have exclusive jurisdiction to determine whether a late claim
17 shall be paid, so long as it is received within 180 days after the Effective Date. Any claims
18 received after that time period shall be automatically denied.

19 13. The Court will conduct a Final Approval hearing on 9-21, 2009,
20 at 8:30, to determine: (1) whether the proposed Settlement is fair, reasonable, and
21 adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs
22 to award to Class Counsel; and (3) the amount of Service Payment to Award to the Class
23 Representatives.

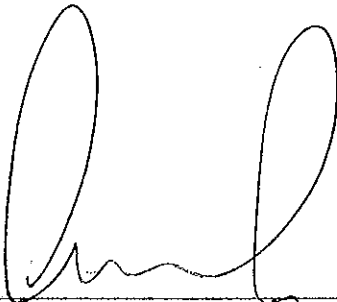
24 14. Plaintiff's motion for final approval of the settlement, and Class Counsel's motion
25 for award of attorneys' fees and costs, and Plaintiff's motion for the award of Service Payments
26 to the Class Representatives shall be filed on or before 9-11, 2009, no later than ten
27 (10) business days before the Final Approval Hearing. Any opposition to such motions shall be
28 due on or before 9-16, 2009. Any reply briefs in support of such motions shall be

1 due on or before 9-18, 2009.

2 15. In the event the Settlement is not finally approved, or otherwise does not become
3 effective in accordance within the terms of the Settlement Agreement, this Order shall be
4 rendered null and void and shall be vacated, and the Parties shall revert to their respective
5 positions as of before entering into the Stipulation.

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7 **IT IS SO ORDERED.**

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10 DATED: 4/23/09



11 Hon. Aurelio N. Munoz
12 Judge of the Superior Court
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