

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LIZETH LYTLE, Individually, and on behalf of
all other similarly situated who consent to their
inclusion in a Collective Action, et al.,

Case No.: 8:12-cv-1848-T-33TBM

Plaintiffs,

v.

LOWE'S HOME CENTERS, INC.,

Defendant.

**JOINT MOTION FOR ORDER APPROVING SETTLEMENT OF A
COLLECTIVE ACTION, AUTHORIZING NOTICE OF SETTLEMENT TO THE
PUTATIVE CLASS AND FOR ENTRY OF JUDGMENT**

Plaintiff, Lizeth Lytle (“Lytle”), together with all opt-in Plaintiffs (“Plaintiffs”), and Defendants, Lowe’s Home Centers, Inc., Lowe’s Companies, Inc., Lowe’s HIW, Inc.,¹ and Administrative Committee of Lowe’s Corporation, Inc. (collectively “Defendants”), jointly move this Court for entry of an order: (a) approving the terms of the Settlement Agreement; and (b) authorizing the proposed follow-up notice to potential class members.

I. INTRODUCTION

Plaintiffs and Defendants (collectively, “Parties” or “Settling Parties”) have entered into a Settlement Agreement of this Collective Action, titled Settlement

¹ Lowe’s Home Centers, Inc. (a named Defendant) was converted to Lowe’s Home Centers, LLC on or about November 1, 2013. Lowe’s HIW, Inc. (another named Defendant) was merged into Lowe’s Home Centers, LLC on or about December 31, 2013.

Agreement And Proposed Notice To Class Members (“Class Settlement Agreement”) pursuant to which Defendants will establish a fund against which Plaintiff and others similarly situated individuals may file claims in exchange for their release of certain defined claims and the dismissal of this case with prejudice. The Parties to this Collective Action Settlement Agreement hereby jointly move this Court for entry of an order approving the terms reflected in the Settlement Agreement, authorizing the proposed notice to potential opt-in plaintiffs (those who have not already joined this lawsuit) advising them of their opportunity to participate in the settlement, dismissing the case with prejudice, and retaining jurisdiction to enforce the terms of the Settlement Agreement. The Settlement Agreement represents a fair, adequate and reasonable compromise of the claims at issue given the existence of disputed issues of fact, disputed issues of law with respect to liability, uncertainty as to whether the opt-in Plaintiffs would be deemed similarly situated; questions as to whether the Plaintiffs were exempt under the administrative exemption from the overtime requirements of the Fair Labor Standards Act (“FLSA”); the risks of whether Plaintiffs could obtain a judgment in their favor; the high expenses of continued litigation on a collective action level; and the risks of possible appeals.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about August 15, 2012, Plaintiff, Lizeth Lytle, commenced a collective action complaint against the Defendants, Lowe’s Home Centers, Inc., and Lowe’s HIW, Inc. Later, Lowe’s Companies, Inc. and the Administrative Committee of Lowe’s Corporation, Inc. were added as named Defendants after Plaintiff filed additional Rule 23 class claims under

ERISA. In this action, the Class Representative, Lizeth Lytle, alleged on behalf of herself and all other similarly situated Human Resources Managers employed with Lowe's, that Lowe's violated the FLSA by misclassifying the HR Manager position as exempt from the overtime wage provisions of the FLSA. Many other opt-in Plaintiffs also alleged in declarations that they were similar to the Plaintiff, that they worked a mandatory overtime schedule, and that they were not paid for their wages because they were treated as salaried, exempt employees. Eventually, the Court granted conditional class certification on January 21, 2014, and notice was sent to the putative class of HR Managers employed within the three year period of time beginning January 10, 2011, including all currently employed HR Managers. Upwards of 880 class members filed consent notices with the Court to participate in this case. After the notice period ended in May 2014, the parties began the process of class discovery, including the exchange of over one million documents, emails, payroll records and other materials; the selection of class representatives for discovery purposes; the depositions of class members and corporate representatives; and other actions necessary for each party to prepare their respective cases for trial.

The Parties also attended mediation in October, 2013, but were unable to consummate a settlement as the parties needed to commence additional discovery related to the class and class claims. The parties then attended mediation before Jim Brown, the Court-appointed mediator, on July 15, 2014, and continued to engage in lengthy, substantive settlement negotiations in the weeks following this mediation. They have now reached the agreement reflected in the Settlement Agreement attached to this Joint Motion as Exhibit "1."

Defendants have denied and continue to deny any and all liability or wrongdoing of any kind with regard to any of the claims alleged, and make no concessions or admissions of liability of any sort. Specifically, Defendants maintain that they properly classified the HR Manager position as a salaried exempt position under the FLSA for Plaintiff, all opt-in Plaintiffs, and all potential Class Members (as that term is defined in the Settlement Agreement). Defendants also contend that for any purpose other than settlement, the action and released claims are not appropriate for collective action treatment pursuant to 29 U.S.C. §216(b). In fact, Defendants filed numerous declarations and obtained deposition testimony that they believe show that the opt-in members (or at least many of them) performed exempt duties and are not similarly situated. Nonetheless, Defendants have concluded that further litigation of this action would be protracted, distracting, and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement on the condition that all class members are entitled to participate in the settlement. Defendants have also taken into account the cost, uncertainty, and risks inherent in any litigation, including risks relating to potential liability under the FLSA. Defendants have therefore determined that it is desirable and beneficial to them to settle the action in the scope, manner, and upon the terms and conditions set forth in the Settlement Agreement.

The Class Representative, Lytle, on behalf of herself, the opt-in Plaintiffs and Class Members, believed and continues to believe that the claims alleged in this lawsuit have merit. However, the Class Representative, Lytle, and the current opt-in Plaintiffs

recognize and acknowledge the expense and duration of continued proceedings necessary to prosecute their claims against Defendants through a decision on final class/collective certification, summary judgment, trial, and any appeals. The Class Representative Lytle, on behalf of herself, the opt-in Plaintiffs and Class Members, has also taken into account the uncertain outcome and the risk of any litigation, including risks relating to potential decertification of this case as a collective action and of a possible unfavorable outcome on the merits, as well as the difficulties and delays inherent in all litigation. Based upon her investigation and evaluation, and that of her class counsel, the Class Representative, Lytle, on behalf of herself, the opt-in Plaintiffs and Class Members, has determined that the settlement set forth in the Settlement Agreement is in the best interests of the Class Members and all opt-in Plaintiffs.

III. SETTLEMENT TERMS

As detailed herein and set forth in greater detail in the Settlement Agreement attached hereto as Exhibit “1” (with incorporated exhibits²), Defendants will be paying up to the total sum of \$9,500,000.00 into a common fund settlement, part of which will be used to compensate individuals who worked as a HR Manager in any store located within the United States during the “Class Period,” which is defined to run from January

² The exhibits incorporated in the Stipulation are as follows:

Exhibit A – Notice Form

Exhibit B – Consent Form

Exhibit C – [Proposed] Order Granting Approval of Collective Action Settlement

Exhibit D – [Proposed] Final Approval Order

Exhibit E – [Proposed] Final Judgment

10, 2011 through the date the Order on this Motion is entered. Each potential Class Member who has not already opted-in to this lawsuit will be eligible to opt-in to the settlement to receive a payment based upon a pro rata allocation method. Class Members will be sent a Notice of Settlement and Opportunity to File Consent to Join (the “Notice”), advising Class Members of the settlement and of their right to obtain their pro rata share of the settlement. They will also receive a consent form allowing them to exercise their right to receive the settlement payment applicable to them, and releasing Defendants. *See* Exhibits “A” and “B” to Settlement Agreement.

From the settlement fund, the Settling Parties have agreed that the Plaintiffs and opt-ins who joined this case prior to settlement and other potential Class Members who timely file a Consent to Join Form will be entitled to receive a payment based upon a pro rata allocation method. The Settlement Agreement provides in Section 9(a) two examples of allocation methods. One example apportions the part of the fund that will be shared by the Settlement Class Members (as that term is defined in Section 8(e) of the Settlement Agreement) by determining the number of qualifying weeks worked by that individual Settlement Class Member divided by the total qualifying weeks worked by all Settlement Class Members during the Class Period.

The Parties came to an agreement to resolve the case for the entire class, and Defendants believe it is in their best interests to provide all class members the opportunity to share in this settlement. For that reason, the Parties agreed to provide all members of the Plaintiff Class (as that term is defined) an additional thirty day period

after receipt of a new notice to opt-in to the lawsuit. After the expiration of this brief period, the Court will be asked to dismiss the case with prejudice, and the Defendants will make the payments called for in the Settlement Agreement.

The Settlement Agreement also provides for payment of the administration costs in addition to the common fund of up to \$75,000 to the third-party claims administrator of the choice of Plaintiffs' Counsel (the "Claims Administrator"). The Claims Administrator will be responsible for issuing the Notice to the potential Class Members, handling the Class Member responses, and issuing payment to Class Members who opt-in to claim their portion of the settlement fund. Defendants will pay to Plaintiffs' Counsel directly the attorneys' fees and costs awarded by the Court.

The Parties have agreed that the named Plaintiff shall receive a service/incentive award in the amount of \$7,000.00 for payment of her significant service and effort related to the investigation of this claim and in assisting and serving as primary class member and consultant in the discovery process. Ms. Lytle spent upwards of 50 hours of her time before and throughout the litigation, attending three mediations, as well as assisting Plaintiff's counsel in discovery, investigation, and deposition preparation.³ Next, the parties agree that those opt-in Plaintiffs, who were part of the group that the parties agreed would provide representative testimony and be subject to discovery after conditional class

³ Ms. Lytle will also enter into a general release with Defendants, which is broader than the release provided by all Class Members, and for which Defendants will pay an additional amount as set forth in Section 6(b) of the Settlement Agreement. This amount does not impact the payment to the Class Members in any way, and is not reduced from the fund described in this Motion.

certification, and who sat for depositions, should likewise be provided with a service/incentive award of an additional \$1,000.00 in addition to their pro rata share of the settlement proceeds. The amount of the requested service awards are consistent and reasonable with awards given in class and collective actions. *See, e.g., Toure v. Amerigroup Corp.*, 2012 U.S. Dist. LEXIS 110300 (E.D.N.Y. Aug. 6, 2012) (approving awards of \$10,000 for each named plaintiff); *see also Willix v. Healthfirst, Inc.*, 2011 U.S. Dist. LEXIS 21102 (E.D.N.Y. Feb. 18, 2011) (approving awards of \$30,000, \$15,000, and \$7,500 to class representatives and opt-ins); *see also Reyes v. Altamarea Grp., LLC*, 2011 U.S. Dist. LEXIS 115984 (S.D.N.Y. Aug. 16, 2011) (approving service awards of \$15,000 and \$5,000).

The Settlement Agreement also compensates Plaintiff, opt-in Plaintiffs and Class Members for their attorneys' fees and costs by providing that Plaintiffs' counsel may apply to receive up to thirty-three percent (33.33%) of the maximum gross common fund (\$3,166,350.00) for attorneys' fees and an additional amount of up to \$100,000 for reimbursement of incurred litigation costs. Defendants have agreed to the payment of the attorneys' fees and costs as awarded by the Court, and have agreed not to contest the fee provision up to this limit.

IV. MEMORANDUM OF LAW

A. The Court Should Approve the Parties' Settlement Because It Represents a Fair and Reasonable Compromise of Disputed Claims

1. The Settlement Meets the Requirements Set Forth in *Lynn's Food Stores, Inc.*

As the Eleventh Circuit explained in *Lynn's Food Stores, Inc. v. United States*, in the “context of suits brought directly by employees against their employer under section 216(b) to recover back wages for FLSA violations,” the parties must present any proposed settlement to the district court, which “may enter a stipulated judgment after scrutinizing the settlement for fairness.” 679 F.2d 1350, 1353 (11th Cir. 1982). Settlements are “permissible in the context of a suit brought by employees under the FLSA for back wages because initiation of the action by employees provides some assurance of an adversarial context.” *Id.* at 1354. This is because the employees are “likely represented by an attorney who can protect their rights under the statute.” *Id.* “If a settlement in an employee FLSA suit does reflect a reasonable compromise over issues, such as coverage or computation of back wages that are actually in dispute; [the Eleventh Circuit] allows the district court to approve the settlement in order to promote the policy of encouraging settlement of litigation.” *Id.*

The standard for approval of an FLSA settlement is lower than for a Rule 23 settlement because an FLSA settlement does not implicate the same due process concerns as does a Rule 23 settlement. *McMahon*, 2010 U.S. Dist. LEXIS 18913, at *15. Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes. *See id.*; *see also Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 n.8 (11th Cir. 1982). Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate indicator of the fairness of the settlement. *Lynn's Food Stores*, 679 F.2d at 1353-54. If the proposed settlement reflects a reasonable compromise over contested issues,

the settlement should be approved. *Id.* at 1354; *McMahon*, 2010 U.S. Dist. LEXIS 18913, at *16; *Mohney*, 2009 U.S. Dist. LEXIS 27899, at *13.

After scrutinizing the settlement, this Court will find that the Stipulation is fair and should be approved. The Settlement Agreement resolves a *bona fide* dispute between the Parties with respect to whether the employees at issue are entitled to overtime wages under the FLSA for their overtime hours worked during the relevant class period, during which all the members of the class were treated as exempt under the administrative exemption in the FLSA. Further, this agreement resolves the *bona fide* dispute over the amount of hours worked per person and the calculation of the regular rate and overtime rates of pay for any hours such class member may be entitled to. In proving such claims, Plaintiffs would face significant obstacles and risk an unsuccessful outcome if this case were to proceed to trial. First, Plaintiffs would face a risk at trial of not prevailing on their wage claims because they worked in Human Resources, and were involved with the interviewing and selection of candidates for all employees at the store level, and were in a position to exercise discretion in parts of their job duties. At trial, Defendants would have claimed, among other arguments, that (i) the hiring process used by Lowe's satisfied the standards of the administrative exemption and that the primary job duty of the HR Manager involved the exercise of discretion and independent judgment, which the Plaintiffs contend otherwise. The jury would have been faced with the difficult task of determining the primary job duty of a position that the parties agree involves upwards of 20 different job duties and roles and a dispute between the parties concerning what an HR

Manager's primary job duty actually was. Moreover, if the case were tried, the jury would have been presented with a very complex case where some employees apparently worked contrary to standard procedures, and will claim to have spent substantial amount of their work hours involved with many routine and repetitive, typical non-exempt job duties, while spending unknown percentages of time engaged in the alleged primary job duties. Plaintiffs would bear the burden of presenting evidence of hours worked beyond the schedules and Defendants would bear the burden of proving the administrative exemption. Moreover, the parties each obtained experts disputing their opponents' respective position, underscoring the complexities and in-depth factual dispute in this case. The complex clear factual nature of this dispute under the FLSA would have required a jury to answer key questions of fact, including: a) what is the primary job duty of the HR Manager, b) does the primary duty involve the exercise of discretion and independent judgment, and c) the amount of time spent performing the primary job duty. The parties agreed to a group of 50 class members to serve as representatives for discovery purposes, including depositions around the country, as well as upwards of 30 or more other fact witness depositions. The parties planned to depose the 50 representatives (and in fact already deposed some), as well as exchanging broad written discovery with respect to this group. Further, the parties would have had to depose and attend four expert depositions and the depositions of numerous other fact witnesses, such that the costs for court reporters and experts alone could be upwards of \$150,000 or more for each side. Given the possibility or likelihood that ultimately a jury would decide this

case, the disputed facts, the competing expert opinions, and the costs and risks of going to trial, the parties recognized it was in their mutual best interest to settle this dispute.

The parties determined that the most equitable means to determining the share of the settlement proceeds for the class members who opt in is to base it on an equitable pro rata determination, such as the number of work weeks per each class member in the relevant class period as a percentage of the total class who ultimately opt in. Defendants likewise agree to fund a common fund up to a maximum possible amount of \$9,500,000.00 based upon a reasonable per person cost basis of approximately \$3,166.67 per person, two-thirds of which per person amount will be used to determine the payments to the Class Members who opt-in (as more fully explained in Section 9(a) of the Settlement Agreement).

If the case is tried, Defendants face the risk of disputing allegations of class members who contend they worked between 50 and 60 hours per week on average. Defendants would also have to show that they had a good faith basis for classifying the HR Manager position as exempt.

Finally, Defendants vigorously opposed collective certification and have argued throughout the case that the HR Managers are not similarly situated, including filing numerous declarations that ultimately would be reviewed by the court when deciding the motion for decertification of the collective action. If Defendants' motion to decertify the class were successful, each individual plaintiff would be faced with proceeding alone in a lawsuit, as to which most opt-ins would likely decline; conversely, Defendants could be

faced with litigation costs of upwards of \$100,000 per each of the opt-in Plaintiffs who file individual lawsuits. Further, if Defendants were successful in proving the administrative exemption at trial, Plaintiffs would not receive any compensation at all, and the class counsel likewise would have spent an estimated \$300,000 in litigation costs. Lytle further considered that the Federal Courts have very limited published opinions even addressing Human Resources department employees and the exemptions, creating even greater uncertainty about her claims. Given the FLSA and supporting regulations expressly set forth that performing human resources duties are related to management, it's understandable why very few if any cases in published opinions or otherwise involve a class case of human resources employees. Further, given the amount of damages for the class at issue, Defendants would have had to both try this case and appeal any decision or judgment for the Plaintiffs such that the case ultimately could reasonably take many more years to resolve, especially if it were remanded. Plaintiffs' counsel estimated that the damages for a reasonable percentage of opt ins of 60% of the class using the fluctuating workweek method were in the range of \$12,500,000 to \$14,945,000 for the class for 104 weeks based upon the scheduled overtime hours, not including liquidated damages.

Of course, if Defendants were successful in proving their defenses and affirmative defenses, the result could be no recovery at all for the Class. The Settling Parties ultimately settled on a maximum sum of \$9.5 million dollars as a fair, adequate, and reasonable settlement after carefully weighing the risks, extensive comprehensive

damage models prepared by Plaintiff's counsel, the merits of each parties' claims and defenses, examining the facts (including the numerous depositions taken), the declarations, the competing expert opinions, the anticipated future costs and fees to be incurred, and most importantly, the mutual desire by both Plaintiff and the Defendants to end this litigation at this time because of the costs and time required by each side related to the litigation ahead. In addition, Plaintiffs' counsel took into account the uncertainty of the class being decertified, yet having to engage in months of depositions and discovery involving upwards of 75 witnesses, expert testimony, and millions of documents and emails to review. Lytle, along with her class counsel, weighed the risks factors and ultimately agreed that it was in the best interests of the class to resolve this dispute at this juncture for the sums agreed upon.

In sum, Plaintiffs and Class Members face factual and legal issues in litigation and at trial that make the likelihood of success at trial uncertain. Many Plaintiffs as well will move, and become unavailable, as has happened, some even withdrawing, such that the risks inherent in this case strongly support settlement at this stage of litigation.

Furthermore, the Plaintiffs and the putative class were represented by counsel experienced in FLSA matters: Mitchell Feldman, Esq. and Dale Morgado, Esq., the two founding and primary shareholders/partners of Feldman Morgado, PA, who in the "adversarial context of a lawsuit," negotiated for the Plaintiffs and Class Members a "reasonable compromise of disputed issues." *See id.* at 1354. Based on the extensive modeling and damages analysis prepared by Plaintiffs' counsel, who are experienced in

handling FLSA class cases, Plaintiffs' counsel recommended to Lytle that the settlement was fair, adequate, and reasonable and, herein, together with Lytle, jointly recommend approval of this class settlement agreement. *See* attached Affidavit of Lytle (Exhibit 2).

Since employees must opt into the case to participate in the settlement, there is no need to provide collective action members with preliminary notice of the suit followed by an opportunity to object. Instead, the approval may be sought on a single motion to enter a stipulated judgment. *Id.* at 1353. When adjudicating motions for approval of settlements, courts operate under a "strong presumption" in favor of approval. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Lynn's Food Stores*, 679 F.2d at 1353.

B. The Settlement Was The Result of Arm's Length Negotiations Free From Collusion

The Agreement was the result of a hard-fought adversarial, arm's length negotiations that have taken place after about two years full years of litigation. In determining whether a settlement was negotiated at arm's-length, courts look to whether there was "vigorous and comprehensive litigation" or whether the settlement was a result of collusion among the parties. *Pickett v. IBP*, 2001 U.S. Dist. LEXIS 22453 (M.D. Fla. December 21, 2001).

1. Settlement was Arm's-Length.

Here the settlement was negotiated at arm's-length by experienced counsel, free from fraud or collusion. "A 'presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Matheson v. T-Bone Rest., LLC*, 2011

U.S. Dist. LEXIS 143773 (S.D.N.Y. Dec. 13, 2011) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)). The Parties were able to settle this action only after they engaged in a vigorous and comprehensive vetting and mediation of the wage practices at issue in this matter. *Diaz v. Hillsborough County Hos. Authority*, 2000 U.S. Dist. LEXIS 14061, *11 (M.D. Fla. Aug. 7, 2000) (quoting *Cotton*, 559 F.2d at 1330) (Absent fraud and collusion, the court not only may rely on the judgment of experienced counsel, but “should be hesitant to substitute its own judgment for that of counsel”). The extensive litigation activities, including the motion for conditional certification, show the adversarial nature of this litigation and settlement. Moreover, the parties attended depositions of store managers, numerous plaintiffs, as well as several of Defendants’ 30(b)(6) corporate representatives. The parties each secured two experts and served each other with opinions that were in dispute. The parties exchanged requests for production of documents and ESI resulting in over one million documents being exchanged, with potentially millions more to be exchanged absent settlement. Further, Plaintiff amended the complaint several times and was hopeful to further amend to add back in the ERISA Rule 23 class claims after satisfaction of procedural prerequisites, such as the exhaustion of administrative remedies. Therefore, the Court should find that the settlement was the result of arm’s-length bargaining.

Based upon their extensive experience in wage and hour collective and class actions (including *Espanol v. Avis*; *Geronkdikis et al v. Bar Louie*; *Barends v. Circle K*; *Chartrand v. Coordinated Benefits*; *Czopek v. Tire Kingdom*, to name a few), Plaintiffs’

Counsel believe that on inspection this Court will join them in concluding that the proposed settlement and Stipulation is fair, reasonable and worthy of approval. It bears all the indicia of fairness warranting approval as set forth in *Lynn's Foods* because Plaintiffs and Class Members were represented by experienced counsel, who, in the “adversarial context of a lawsuit” engaged in “serious, informed, arms-length negotiations” of “a *bona fide* dispute with respect to coverage [and] amounts due under the Act,” resulting in a fair, and reasonable compromise of claims in settlement. *See Lynn's Foods*, 679 F.2d at 1353-54.

2. Distribution Will Be Equitable.

Distributions from the settlement fund will be equitable and based upon Lowe's personnel and time records data with the same formula applied to all Class Members. Each Class Member who timely files a Consent to Join Form will receive a pro-rata share of the settlement fund based upon analysis of their actual weeks worked for Lowe's during the relevant class period. After ascertaining the number of Settlement Class members, Class Counsel will provide a pro-rata share of the total Final Distribution Amount, as that term is defined and explained in Section 9(a) of the Settlement Agreement, by allocating the funds either by comparing the Settlement Class member's w-2 earning for the total class period compared to the total compensation paid to all Settlement Class members during the Class period, or alternatively, comparing the work weeks worked by each Settling Class Member to the total work weeks worked by all Settling Class Members. Under this approach, each Settlement Class member would be

paid a pro rata share of the Final Distribution Amount (as defined in Section 9(a)) according to the number of work weeks he or she worked.

3. Modest Service Payments Are Appropriate for the Named Plaintiff and Opt-In Plaintiffs Who Served as Nominated Class Representatives for Discovery.

Under the terms of the proposed Settlement in Section 6(b), the named Plaintiff and the opt-In Plaintiffs who served as nominated class representatives for discovery by providing depositions will benefit from the receipt of modest service payments. To recognize these plaintiffs, whose time and dedication participating in the investigation, discovery, and mediation which make settlement possible, service payments are not unusual. “Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.” *Hosier v. Mattress Firm, Inc.*, 2012 U.S. Dist. LEXIS 94958, 14-15 (M.D. Fla. June 8, 2012), citing *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In Re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)); see *Su v. Elec. Arts, Inc.*, No. 6:05-cv-131-Orl-28JGG, 2006 U.S. Dist. LEXIS 98894, 2006 WL 4792780, at *1, 2 (M.D. Fla. Aug. 29, 2006) (unpublished Report and Recommendation), adopted, 2006 U.S. Dist. LEXIS 67274, 2007 WL 2780899 (M.D. Fla. Sept. 20, 2006) (unpublished); see also *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, No. 94-CV-0403(JG), 2002 U.S. Dist. LEXIS 16314, 2002 WL 2003206, at *6 (E.D.N.Y. Aug. 1, 2002) (unpublished) (collecting cases). “Such awards are justified when the class representatives expend considerable time and effort on the case, especially

by advising counsel, or when the representatives risk retaliation as a result of their participation.” *Ingram*, 200 F.R.D. at 694. *See also, In Re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving \$303,000 payment to each class representative plaintiff in employment case where class members on average received \$38,000).⁴

In the present case, the named Plaintiff spent a significant amount of time and effort prosecuting the case, assisting class counsel, attending conferences and meetings, and in analyzing all the discovery records. Ms. Lytle spent over 2.5 years working with Class Counsel on this case and serving as the Class Representative for a class of approximately 3,000 employees. Additionally, the parties agreed upon and selected 50 class members to serve as representatives for discovery, and those who ultimately sat for depositions who are identified in Section 6(a), had to devote additional time and effort in preparing and attending a deposition. Moreover, the incentive awards are very modest, and thus the incentive awards reflected in Section 6(b) of the Settlement Agreement and agreed to by Defendants, should be approved.

⁴ District courts in the Eleventh Circuit routinely approve settlements granting named plaintiffs additional relief. *See, e.g., Signorelli, et al. v. UtiliQuest*, 2008 U.S. Dist. LEXIS 109357 (M.D. Fla. July 25, 2008); *Shores v. Publix Super Markets, Inc.*, No. 95-1162-CIV-T-25E, Consent Decree, Dkt. 319, at 90-91 (M.D. Fla. May 23, 1997) (named plaintiffs provided additional compensation for signing a full-release of claims, for time spent in depositions, for risk of litigation, and for spending substantial time and effort); *Haynes v. Shoney's, Inc.*, 1993 U.S. Dist. LEXIS 749, *23, *137 (N.D. Fla. January 25, 1993) (approving as fair, adequate and reasonable a settlement that afforded each named plaintiff \$ 100,000, while class members were required to file claim forms and provided a *pro rata* share of the remaining funds).

4. The Notice of Settlement and Consent to Join and Release Should Be Approved.

To facilitate this settlement this Court should authorize the Parties to mail notice of this Settlement to provide the potential Class Members who have not already opted-in the opportunity to participate through the distribution of opt-in forms under section 216(b). *Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 168-69 (1989); *Dybach v. State of Fla.*, 942 F.2d 1562, 1567-68 (11th Cir. 1991); *Signorelli, et al. v. UtiliQuest*, 2008 U.S. Dist. LEXIS 109357 (M.D. Fla. July 25, 2008). The notice procedures provided under Section 216(b) permit potential plaintiffs to participate in the settlement by filing consent to join form, while providing that those who do not elect to do so will not be bound to the outcome of the case. The Parties agree that the proposed Notice of Settlement and Consent to Join and Release Form contained in Exhibit A of the Stipulation fairly and clearly inform Potential Opt-In Plaintiffs of their legal options with respect to participating, or not, in the settlement of this litigation.

V. CONCLUSION

In sum, the Parties submit the Settlement Agreement as a fair and reasonable resolution of the disputed issues and that its entry will ensure to “secure the just, speedy, and inexpensive determination” of this action. Fed.R.Civ.P. Rule 1. Accordingly, the Parties urge this Court to grant the Proposed Order Approving Stipulation (Stipulation Exhibit D to the Settlement Agreement) and enter an order authorizing notice to Class Members of their opportunity to participate in the benefits of this settlement (Exhibit A to the Settlement Agreement).

Dated this 22nd day of August, 2014

Respectfully Submitted,

/s/ Mitchell L. Feldman, Esq.

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Trial Counsel and Attorneys for the
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served via E-mail to Juan C. Enjamio, Esq, HUNTON & WILLIAMS, LLP, (E-mail: jenjamio@hunton.com) on this 22nd day of August 2014.

Mitchell L. Feldman
MITCHELL L. FELDMAN
Florida Bar No. 0080349

EXHIBIT 1

COLLECTIVE ACTION SETTLEMENT AGREEMENT

THIS COLLECTIVE ACTION SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between Lizeth Lytle ("Plaintiff"), in her individual capacity and as "Class Representative" (as that term is defined in Section 3 below and as ultimately appointed by the Court), on her own behalf and on behalf of the "Plaintiff Class" (as defined in Section 2 below and as ultimately certified as part of the Court's approval of this settlement), on the one hand, and Lowe's Home Centers, LLC ("Defendant")¹, on the other hand, with reference to the recitals and provisions set forth below (Plaintiff and Defendant are collectively referred to as the "Parties"). This Agreement is effective upon its execution by all Parties.

RECITALS

WHEREAS, Plaintiff and Lowe's Home Centers, Inc., Lowe's HIW, Inc., Lowe's Companies, Inc., and the Administrative Committee of Lowe's Corporation, Inc. are named parties to the case styled as *Lytle v. Lowe's Home Centers, Inc. et al.*, Case No. Case No. 8:12-cv-1848-33TBM, which is pending in the United States District Court for the Middle District of Florida (the "Lawsuit");

WHEREAS, Lowe's Home Centers, Inc. was converted to Lowe's Home Centers, LLC on or about November 1, 2013 and Lowe's HIW, Inc. was merged into Lowe's Home Centers, LLC on or about December 31, 2013;

WHEREAS, Plaintiff, on her own behalf and on behalf of the Plaintiff Class (as defined below), alleges that she and all similarly situated Human Resources Managers ("HRMs") were misclassified by Defendants as exempt employees under the Fair Labor Standards Act ("FLSA");

WHEREAS, Plaintiff alleges that, as a result of the alleged misclassification, Defendants violated the FLSA and provisions of the Employee Retirement Income Security Act ("ERISA");

WHEREAS, the Court conditionally certified a collective action under Section 216(b) of the FLSA and denied as moot Plaintiff's motion to certify a Rule 23 class;

WHEREAS, to date 884 current or former HRMs have filed consents to join this Lawsuit;

¹ Lowe's Home Centers, Inc. (a named Defendant) was converted to Lowe's Home Centers, LLC on or about November 1, 2013. Lowe's HIW, Inc. (another named Defendant) was merged into Lowe's Home Centers, LLC on or about December 31, 2013.

Approved by Legal Dept 5440

VP Approval _____

WHEREAS, the Plaintiff Class, as defined by the Court in its Order dated January 14, 2014 granting conditional certification totals at least 2,834 potential class members;

WHEREAS, Defendants deny that they have misclassified HRMs as exempt employees, maintain that HRMs exercise (and have exercised during the entire Class Period) duties and responsibilities that render them properly exempt under the FLSA, and deny that they owe any damages under the FLSA or ERISA;

WHEREAS, the Parties, through their counsel, have engaged in extensive discovery, including exchanging thousands of documents, taking the deposition of corporate representatives of the Defendant, and taking the depositions of select current and former HRMs who filed consents to join this Lawsuit;

WHEREAS, said discovery has disclosed facts that raise questions about the viability of a collective action under Section 216(b) of the FLSA and that show that there is no basis for a determination that any violation by Defendants (to the extent there was a violation) was willful and/or not in good faith;

WHEREAS, the issue of the overtime rates applicable to the claims of the Plaintiff Class was and is the subject of a dispute concerning the applicability of the Fluctuating Workweek method (which, among other considerations, computes the overtime rate at one-half of the regular hourly rate);

WHEREAS, a large number of the Plaintiff Class are California residents who executed arbitration agreements and would potentially be faced with filing individual actions to pursue claims under the FLSA or California wage laws, leading to the potential arbitration of hundreds of individual claims and entangling the parties in protracted enforcement actions and appeals, all of which would be unduly costly and time consuming;

WHEREAS, without admitting any liability or conceding in any way that the duties performed by HRMs during the Class Period rendered HRMs non-exempt, Defendant has revised the job description for the HRM position, and the Parties agree that the revised job description meets the requirements for the administrative exemption under the FLSA;

WHEREAS, the Parties want to settle all claims that Plaintiff and the Plaintiff Class may have relating to or that flow from the alleged misclassification during the Class Period, including all claims under the FLSA, ERISA, and similar state wage and hour laws;

WHEREAS, the Parties participated in two formal mediation sessions, the latest occurring on July 15, 2014, before James Brown, Esq., the Court-appointed mediator, and have continued to negotiate the terms of this Agreement since the formal mediation session;

WHEREAS, Lowe's has agreed to a maximum potential settlement fund of Nine Million Five Hundred Thousand Dollars (\$9,500,000.00), which amount was calculated by multiplying the amount of Three Thousand One Hundred and Sixty Seven Dollars (\$3,167.00) times the estimated number of potential Plaintiff Class members, which

amount includes all payments to the Plaintiff Class, as well as all payments for attorneys' fees, incentive payments and other costs to the extent and in the manner set forth below (the "Maximum Settlement Amount"), and which Maximum Settlement Amount will be paid only if all members of the Plaintiff Class become Settlement Class Members (as those terms are defined below);

WHEREAS, the Parties agree to a settlement of the Lawsuit because of the mutual costs and risks of continuing to prosecute and defend misclassification lawsuits that may be filed on behalf of HRMs;

WHEREAS, Defendants have denied and continue to deny each of the claims and contentions raised in the Lawsuit;

WHEREAS, if the Agreement is not approved or if the Effective Date does not occur for any reason, Defendants shall be free to assert any defenses to the claims raised by Plaintiff or the Plaintiff Class, and to oppose certification of a FLSA collective action or a Rule 23 class action; and

WHEREAS, it is the intention of the Parties to settle and dispose of all claims, demands, and causes of action that are, or could have been, asserted in this Lawsuit or in any lawsuit or legal proceeding relating in any way to the alleged misclassification of HRMs who have worked for Defendants or their affiliates or predecessors during the Class Period.

PROVISIONS

1. COOPERATION BY THE PARTIES

The Parties and their counsel agree to cooperate fully with each other to promptly execute all documents and take all steps necessary to effectuate the terms and conditions of this Agreement.

2. FINAL CERTIFICATION OF CLASS UNDER SECTION 216(b)

a. Definition of Plaintiff Class

By Order dated January 14, 2014, the Court conditionally certified the Lawsuit as a national class pursuant to Section 216(b) of the FLSA. The Parties will ask the Court to finally certify for settlement purposes only the "Plaintiff Class" defined as follows (the definition of which mirrors definition of the group that was conditionally certified by the Court in its Order granting conditional certification):

All persons who were employed as a Human Resources Manager by one of the Defendants at any time from January 10, 2011 through the [date of Order granting approval].

b. Persons Excluded From Settlement

Any person who previously released or settled all of the claims covered by this settlement, or any person who previously received or was paid awards through civil or administrative actions for all of the claims covered by this settlement, shall not be a member of the Plaintiff Class.

c. Final Certification of Plaintiff Class for Settlement Purposes

Solely for the purpose of implementing this Agreement and effectuating the settlement, the Parties agree to the entry of an order finally certifying for settlement purposes only a collective action under Rule 216(b) of the FLSA limited to the Plaintiff Class and providing an additional notice period subject to the conditions and limitations set forth in Section 8 below.

In the event that this settlement does not receive preliminary or final approval from the Court (or if a final approval order is reversed on appeal), no party shall use the foregoing provision or the certification of the Plaintiff Class, the certification of a collective action for settlement purpose, the appointment of Class Representative, or the appointment of Plaintiff's Counsel as Class Counsel for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

3. APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL

In the Order dated January 10, 2014, the Court appointed Plaintiff as Class Representative and appointed Plaintiffs' counsel as Class Counsel. The Parties agree that Plaintiff shall remain as Representative of the Plaintiff Class (the "Class Representative"), and Plaintiff's Counsel shall remain as Class Counsel (the "Class Counsel"). Defendant agrees to these designations for settlement purposes only. In the event that this settlement does not receive final approval from the Court (or if a final approval order is reversed on appeal), no party shall use the foregoing provision of this Agreement or the appointment of the Class Representative and/or Class Counsel for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

4. CLASS PERIOD

The class period shall be from January 10, 2011 to [date of Order Granting Approval] (the "Class Period").

5. ADMINISTRATION OF SETTLEMENT

Class Counsel, as defined above, shall be responsible for the administration of the settlement contemplated in this Agreement, including without limitation: providing all notices to the Plaintiff Class as required under this Agreement; receiving and processing all communications from and to the Class; maintaining all records related to the administration of the settlement; and ensuring that all withholdings are properly

applied and processed. Class Counsel may, but is not obligated to, contract with a third party to provide some or all of the services required to administer the settlement.

Defendant shall provide Class Counsel with all documents necessary for the administration of the settlement, and shall be responsible for the costs of the settlement administration to the extent and in the manner set forth in Section 6 below. No costs or fees for administration shall be incurred, however, until and unless the Court grants preliminary approval of the settlement.

6. CONSIDERATION BY DEFENDANT

In consideration for the releases, dismissals and promises set forth in this Agreement, Defendant agrees to make payments up to the Maximum Settlement Amount, which payments include: (1) the payment to members of the Plaintiff Class pursuant to the payment procedure as described in Section 9 of this Agreement; (2) the payments, including incentive payments, as described in and as limited by Section 6(b) below and as awarded by the Court; (3) the costs of administration as set forth in and as limited by Section 6(c) below; and (4) the payment of attorneys' fees, costs and expenses, as set forth in and as limited by Section 6(d) below and as awarded by the Court.

a. Net Settlement Fund for Plaintiff Class: The Net Distribution Amount

In accordance with the computation mechanism established in Section 9, the Plaintiff Class will then have available to receive up to a maximum of Two Thirds (2/3) of the Maximum Settlement Amount, which sum equals Six Million Three Hundred and Thirty Three Thousand Three Hundred and Thirty Three Dollars (\$6,333,333.00) (the "Net Distribution Amount"), from which the Settlement Class Members (as that term is defined in Section 8(e) below) will be paid on a pro rata basis as set forth in Section 9 below after first deducting the costs to be paid Class Counsel, the incentive payments to the extent and up to the limits set forth in Section 6(b), and the costs of administration to the extent and up to the limits set forth in Section 6(c). The Net Distribution Amount shall, therefore, include all the payments to the Plaintiff Class, the incentive payments to the extent and subject to the limits set forth in Section 6(b), the costs of administration to the extent and subject to the limits set forth in Section 6(c), the costs awarded to Class Counsel under Section 6(d), and the withholdings and taxes described below.

Defendant shall pay the Settlement Class Members from the Net Distribution Amount their individual pro-rata share of the settlement in the manner and to the extent set forth in Section 9. The Net Distribution Amount to be paid by Defendant to the Settlement Class Members shall include unpaid overtime pay, and any wages, reimbursements, penalties, incentive awards (unless otherwise excluded below) and payments to Plaintiff (unless otherwise excluded below) or damages associated with or related to the alleged misclassification of Plaintiff and the Plaintiff Class as exempt employees under the FLSA or any state wage and hour laws; the alleged failure to pay Plaintiff and the Plaintiff Class overtime compensation or to make contributions under ERISA based on any such overtime compensation; expenses as approved by the Court

(except as otherwise set forth below); settlement payments; 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 except as otherwise set forth in this Section. The Net Distribution Amount does not include the reimbursement of attorneys' fees (which are addressed in Section 6(d)), the costs and expenses of administration excluded under Section 6(c), and the payments to Plaintiff excluded under Section 6(b).

Under no conditions will the Defendant's collective liability for payments to the Plaintiff Class in the Lawsuit exceed the Net Distribution Amount, unless otherwise explicitly set forth in this Section 6. At no time shall Defendant have the obligation to segregate funds comprising the Net Distribution Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds. All payments to the members of the Plaintiff Class, and all costs of administration (subject to the limitations set forth in Section 6(c)), penalties, incentive payments (subject to the limitations set forth in Section 6(b)), and costs of Class Counsel as awarded by the Court shall be paid out of the Net Distribution Amount.

In addition to the Net Distribution 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.

Defendant's sole monetary obligations to the Plaintiff Class under this Agreement shall be the Net Distribution Amount (which shall be paid on a pro rata basis as set forth in Section 9) and the employer-paid withholding and payroll taxes and similar expenses referred to above.

b. Incentive Awards

Class Counsel will file an application for approval of an incentive award in an amount not to exceed Seven Thousand Dollars (\$7,000.00) to the Plaintiff. This award is in addition to the Class Representative's Individual Settlement Award. Defendant agrees not to object to such application. In addition, Defendant agrees to pay the Plaintiff an additional amount of Fifty Thousand Dollars (\$50,000.00) for the execution of a general release, which release shall release claims in excess of the Release to be provided by the Plaintiff Class as set forth in Section 17. Defendant agrees that the incentive award (to the extent approved by the Court) and the amount to be paid to Plaintiff as consideration for the general release shall together not exceed Fifty Seven Thousand Dollars (\$57,000.00), which amount shall be in addition to the Net Distribution Amount (and thus shall not impact the Net Distribution Amount). To the extent the amount awarded to the Class Representative as an incentive payment and/or in consideration for a general release together exceed \$57,000.00, any excess over \$57,000.00 shall be paid from the Net Distribution Amount.

Defendant agrees not to object to the payment of an incentive award of One Thousand Dollars (\$1,000.00) each to the following individuals (Robert Seguinot, Melissa Colette Murphy, Freida Kelley, Carly Sarah Bolton and Denise Giambrone), who either traveled for depositions in the Lawsuit or provided unique services during the Lawsuit. Any such incentive award shall be subject to Court approval, shall be paid from the Net Distribution Amount, and shall be in addition to their Individual Settlement Awards.

c. Costs of Administration

Defendants shall reimburse Class Counsel up to Seventy Five Thousand Dollars (\$75,000.00) for the costs of administration, which amount shall not be deducted from the Net Distribution Amount. Any costs of administration in excess of Seventy Five Thousand Dollars (\$75,000.00) shall be deducted from the Net Distribution Amount.

d. Attorneys' Fees and Costs

Defendant understands that Class Counsel will file an application for an award of attorneys' fees, which application shall ask the Court to reimburse Class Counsel for attorneys' fees up to One Third (1/3) of the Maximum Settlement Amount, which amount is equal to Three Million One Hundred and Sixty Six Thousand Six Hundred and Sixty Seven Dollars (\$3,166,667.00). The Parties understand that the fees are to be awarded at the discretion of the Court.

Defendant agrees not to object to an application seeking attorneys' fees up to the limits set forth in this Section 6(d). Any such attorneys' fees shall be approved by the Court. Defendant shall pay the amount of fees awarded up to the limit set forth in this Section, and any amount of fees not awarded by the Court shall be retained by Defendant. The amount of attorneys' fees awarded by the Court shall not impact the Net Distribution Amount (that is, shall not impact the settlement proceeds to be awarded to the Settlement Class Members). Defendant may unilaterally withdraw from this Agreement if Plaintiffs' Counsel seeks attorneys' fees and the reimbursement of costs and expenses in an amount in excess of that set forth in this Section 6(d), or if any of the conditions set forth in this Section 6(d) are not accepted by the Court. In the event that this settlement does not receive final approval from the Court (or if a final approval order is reversed on appeal), no party shall use the foregoing provisions or the award of attorneys' fees, costs and expenses for any purpose whatsoever in the Lawsuit or in any other action so proceeding. The amount of fees awarded by the Court shall not diminish in any way the Net Distribution Amount or affect the payments to the Settlement Class Members.

In addition to the application for fees, Class Counsel shall apply for reimbursement of costs of litigation of up to One Hundred Thousand Dollars (\$100,000.00), which amount shall be awarded at the discretion of the Court, and which amount shall be deducted from the Net Distribution Amount before the calculation of each Plaintiff Class member's pro rata share of the Net Distribution

Amount. Defendant shall not object to an application by Class Counsel for the reimbursement of costs up to the amount set forth in this Section.

7. FILING OF MOTION FOR APPROVAL

As part of the Motion for Approval, the Parties shall request the Court as part of the final judgment to certify the FLSA collective action, as defined and described in Section 3 above, only for purposes of settling the Lawsuit. Defendant does not consent to, and does not advocate for, but shall not oppose for settlement purposes only, the certification of a collective action under Section 216(b) of the FLSA. In the event that this settlement is not finalized, does not receive final approval from the Court, or if a final approval order is reversed on appeal, no party shall use the foregoing provision or the certification of a collective action for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

8. NOTICE OF SETTLEMENT AND CLAIM FORM; TIME TO SUBMIT CLAIMS

a. Form of Notice

The Parties shall submit to the Court for approval a Notice to the Plaintiff Class (the "Notice") in the form attached to this Agreement as Exhibit "A."

b. Consent Form

The Consent Form to be provided to each as part of the Notice Package (as defined below) shall be in the form attached to this Agreement as Exhibit "B."

c. Initial Mailing

Within twenty-one (21) days of execution of this Agreement, Defendant will provide supplemental Class Members' information to Class Counsel. Within fourteen (14) days of an Order Approving this Agreement, Class Counsel (or its designee) shall provide Members of the Plaintiff Class who have not already opted-in the Court-approved Notice as described in Section 8(a) above, subject to the limitation set forth in this paragraph. Each Notice shall be accompanied by the Consent Form approved by the Court, in substantially the same form as Exhibit "B" to this Agreement. (Exhibits A and B shall be collectively referred to as the "Notice Package.") The Notice Package shall be mailed only to those members of the Plaintiff Class who have not already filed consents to join this Lawsuit.

Class Counsel (or its designee) shall send the Notice Package to all members of the Plaintiff Class, subject to the limitation set forth in the immediate prior paragraph, via first class United States Mail. Before the first mailing, Class Counsel (or its designee) will perform a National Change of Address ("NCOA") search, and will perform one skip trace as to any Notices (and accompanying documents) that are returned by the post office for invalid addresses within five (5) days of receipt of such returned Notice. Those Members of the Plaintiff Class who receive Notice pursuant to one skip trace shall be

Class Counsel S HD
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informed (via an insert in the Notice) that his or her time to submit a Claim Form to Class Counsel (or its designee) shall be the longer of (i) fourteen (14) days from the date Notice is mailed to the updated address, or (ii) the Submission Date. Upon Request, Class Counsel shall provide Defendant's Counsel with the identity of all members of the Plaintiff Class who were sent Notice as a result of the skip trace and whose Notice was again returned.

d. Follow-up Notice

The Parties may provide or submit additional notice to the Plaintiff Class only if they mutually agree in writing.

e. Time for Submission of Consent Form

i. To be considered timely, a Consent Form must be submitted to Class Counsel (or its designee) and post-marked on or before thirty (30) days from the date of mailing (the "Submission Date").

ii. Those members of the Plaintiff Class who receive Notice pursuant to the one skip trace shall have until the longer of (i) fourteen (14) days from the date Notice is mailed to the updated address or (ii) the Submission Date to submit a Consent Form, whichever is later.

iii. The submission of a Consent Form will be deemed completed on the earlier of the date of receipt by Class Counsel (or its designee) or the postmark date on the envelope containing the Consent Form.

iv. The term Settlement Class Member shall be defined as all members of the Plaintiff Class who submit a timely and properly completed Consent Form and all other members of the Plaintiff Class who have already submitted consents to join the Lawsuit and remain part of the Lawsuit.

f. Filing of Consent Forms

Within three (3) days after the Submission Date or after the latest date for any Plaintiff Class Member to submit a Consent Form after a skip trace, whichever is later, Class Counsel shall file with the Clerk of the Court all Consent Forms received timely. Class Counsel shall advise Defendant's counsel upon request of the number of Consent Forms received.

g. Designee

All acts required to be performed by Class Counsel in this Section may be performed by a third party designated by Class Counsel.

9. PAYMENT TO MEMBERS OF THE PLAINTIFF CLASS AND CLAIMS PROCEDURE

a. Individual Settlement Awards

Class Counsel (or its designee) shall compute the amount of individual settlement awards from the net settlement fund described in Section 6(a) above to be distributed to the Settlement Class Members as follows: Class Counsel shall multiply the amount of Two Thousand One Hundred and Eleven Dollars (\$2,111.00) times the number of Settlement Class Members, and shall deduct from this total: (i) the Court-approved incentive awards and other payments to the Class Representative (except as otherwise excluded from the Net Distribution Amount by Section 6(b)); (ii) all costs and expenses of administration in connection with the settlement and claims administration (except as otherwise excluded from the Net Distribution Amount by Section 6 (c)); and the costs of litigation approved by the Court as set forth in Section 6(d). For purposes of this Agreement, the Parties label this result as the "Final Distribution Total."

Each Settlement Class Member's "Individual Settlement Award" shall equal his or her proportionate share of the Final Distribution Total as determined by a method to be determined by Class Counsel and approved by Defendant. For purposes of illustration, the Individual Settlement Awards may be determined by the compensation earned by each individual Settlement Class Member during the Class Period divided by the total compensation paid to all Settlement Class Members during the Class Period, where the compensation is determined based on the amounts reported on the Class Members' W-2 forms.

Example: If the total compensation paid to the Settlement Class members during the Class Period were \$100,000 (as determined by W-2 data), a Settlement Class Member who earned \$1,000 during the Class Period (as reported on his or her W-2 form) would receive one percent (1%) (\$1,000 divided by \$100,000) of the Final Distribution Total.

Alternatively, the Individual Settlement Awards may be determined by providing each Class Member a flat amount based on his/her pro rata share of the total workweeks in the Class Period (that is, the individual Class Member's total weeks worked divided by the total gross weeks of the Settlement Class Members). The Individual Settlement Awards will be allocated as alleged unpaid wages, which will be reported to the IRS on Form W-2. Class Counsel (or its designee) will pay out all claims submitted by Settlement Class Members, out of a qualified settlement fund, on a confidential basis and issue IRS tax forms.

b. Claimed Settlement Amounts; Unclaimed Amounts

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

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Net Distribution Amount minus the deductions set forth in Section 9(a). The Final Distribution Total will not exceed the Net Distribution Amount.

Any member of the Plaintiff Class who does not become a Settlement Class Member shall not receive any Individual Settlement Award or any Claimed Settlement Amount. Any portion of the Net Distribution Amount that is not distributed to the Plaintiff Class shall be retained by Defendant.

c. Tax Liability and Net Payments

The payment by Defendant pursuant to this Agreement is for alleged failure to pay compensation due, interest on said sum, and all other claims as set forth in the Lawsuit. 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, if any, 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 this Agreement. Defendants 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. Defendants 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, Defendants shall provide such information 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 Defendants harmless and indemnify them for any liabilities, costs and expenses, including attorneys' fees, assessed or caused by any such taxing authority which result from the Settlement Class Members' failure to remit taxes due on payments made to the Settlement Class Members pursuant to this Agreement.

d. Payment of Settlement Funds Will Have No Effect on Benefit Plans

The payment to any member of the Plaintiff Class as provided for in this 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

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have modified and/or amended the language of any jointly trusted benefit plans, to make clear that any amounts paid as a result of this 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.

e. Applicability of Laws Dealing with Residuals

The parties agree that this settlement is not subject to any state or federal law mandating the distribution of unpaid residuals, including without limitation Section 384 of the California Code of Civil Procedure.

f. Retention by Defendant of Unpaid Amounts

Defendant shall fund the settlement only up to the extent necessary to cover all claims, fees, costs and awards, and Defendants shall retain any portion of the Maximum Settlement Amount not paid out as attorneys' fees, expenses and costs; incentive fees; or Individual Settlement Awards. Similarly, Defendant is only required to pay Class Counsel's fees up to the amount awarded by the Court to the limit set forth in Section 6(d), and shall retain any portion of the fees and costs requested by Class Counsel that is not awarded by the Court.

10. ADMINISTRATION OF MAXIMUM SETTLEMENT AMOUNT

Class Counsel (or its designee) will calculate the Net Payments to be made to the Settlement Class Members from the Net Distribution Amount in accordance with the terms and provisions of this Agreement. The fees, costs, and expenses incurred in connection with said verification and/or performance shall be considered settlement administration expenses and shall be paid in the manner set forth in Section 6(c). All of the fees, costs and expenses incurred in connection with printing, issuing and/or mailing settlement payments shall be considered settlement administration expenses and shall be paid in the manner set forth in Section 6(c).

No person shall have any claim against Defendants, Defendants' counsel, Plaintiff, the Plaintiff Class, Class Counsel, or any third party designated to aid in the process of administration, based on distributions and payments made in accordance with this Agreement.

11. COURT'S APPROVAL

The Parties shall seek approval of this settlement by the Court for entry of an Approval Order in substantially the same form as Exhibit "C" attached to this Agreement. As part of the approval process, the Court shall be asked to approve, among other matters, that the terms of the settlement are fair, reasonable and adequate; the Notice and the method of providing notice; the Consent Form; and the procedure for the calculation of settlement distributions.

12. MOTION FOR ATTORNEYS' FEES

Class Counsel shall file a motion seeking approval of its fees and costs in the manner and subject to the limitations set forth in Section 6(d) above.

13. [PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL

After the expiration of the Notice deadline as set forth in Section 8, the Court shall be requested to issue a [Proposed] Final Approval Order and Final Judgment ("Proposed Final Judgment") in substantially the same form as Exhibits "D" and "E" attached to this Agreement, respectively, which shall, *inter alia*:

a. Confirm that the settlement is fair, reasonable, adequate, in good faith and in the best interests of the Plaintiff Class, as a whole, and order the Parties to carry out the provisions of this Agreement.

b. Dismiss with prejudice all actions, complaints and claims and any lawsuit as against Defendant and/or the Released Parties (as that term is defined in Section 17 below), including the Lawsuit, arising out of or related to any of the actions or events complained of in the Lawsuit.

c. Adjudge that all Settlement Class Members are conclusively deemed to have released Defendant and the Released Parties of and from any and all rights, claims, demands, liabilities, causes of action, liens and judgments arising out of or in any way related to the matters set forth, or that could have been set forth, in the Lawsuit in relation to the alleged claims relating to the release of the Plaintiff Class.

d. Bar and permanently enjoin each Settlement Class Member from prosecuting against Defendant and the Released Parties any and all of the settled and released claims which the Settlement Class Members or any of them had, have or may have in the future, arising out of, based upon, or otherwise related to any of the settled and Released Claims (as defined in Section 17 below), or any of the allegations asserted in the Lawsuit.

e. Reserve continuing jurisdiction as provided herein above.

14. APPROVAL AND ADOPTION OF [PROPOSED] FINAL JUDGMENT BY COURT AND FINAL JUDGMENT

Only if additionally required by the Court and not otherwise approved by the Court as part of the Motion to Approve this Agreement, Plaintiff shall seek final approval and adoption of this settlement from the Court for entry of the [Proposed] Final Judgment and the Final Approval Order, as well as an Attorneys' Fee Order and Incentive Award Order.

APPROVED BY S.H.P.
Final Approval

15. PAYMENT OF SETTLEMENT PROCEEDS

a. Timing of Payments to Settlement Class Members

Net payments to Settlement Class Members (including any Court-approved incentive awards) shall be made no later than ten (10) business days after the date on which the time to challenge any aspect of this settlement by appeal has lapsed, provided that no such appeal has been filed (regardless of whether any objections to the settlement were made). If any such appeal is filed, Net Payments to Settlement Class Members shall be made no later than (10) business days after a final resolution of all appeals that result in the upholding of the parties' settlement. The date defined and determined by this Section shall be called the "Effective Date."

b. Timing of Payments to Class Counsel

Payments shall be made to Class Counsel for Court-approved attorneys' fees, costs and expenses no later than ten (10) business days after the date on which the time to challenge any aspect of this settlement by appeal has lapsed, provided that no such appeal has been filed (regardless of whether any objections to the settlement were made). If any such appeal is filed, then all payments to Class Counsel shall be made no later than ten (10) business days after a final resolution of all appeals that result in the upholding of the parties' settlement.

c. Method of Payment

Class Counsel (or its designee) shall make all payments to the Settlement Class Members, which shall include making the appropriate payroll deductions, reporting obligations and issuing the Individual Settlement Awards. The expiration date on the settlement checks will be ninety (90) days from the date the settlement checks are issued. Any uncashed checks will be returned to Defendant.

16. COSTS

The named Defendants shall bear their own costs, expenses, and attorneys' fees incurred in connection with or arising out of the Lawsuit. The Plaintiff Class' attorneys' fees and costs, as approved by the Court, shall be paid from the Maximum Settlement Amount in the manner and subject to the conditions set forth in this Agreement.

17. RELEASE BY ALL SETTLEMENT CLASS MEMBERS

As of the Effective Date, all Settlement Class Members and Plaintiff release Defendant and all the other entities named as Defendants in the Lawsuit (Lowe's Home Centers, Inc.; Lowe's HIW, Inc.; Lowe's Companies, Inc.; and the Administrative Committee of Lowe's Corporation, Inc.) and each of their respective past, present and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their

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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 Defendants (the "Released Parties") from the "Released Claims," as defined below.

a. Released Claims by all Approved Claimants

For purposes of this 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 asserted in the Lawsuit or that relate in any way to the classification of HRMs as exempt employees, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, or that arise under any state wage and hour laws, the FLSA, 29 U.S.C. § 201, *et seq.* (except as otherwise stated in subparagraph (b) immediately below), and/or ERISA, 29 U.S.C. § 1001 *et seq.* (except as limited immediately below), whether for economic damages, non-economic damages, restitution, penalties, wages, liquidated damages, interest, or attorneys' fees arising out of the claims at issue, including: the causes of action asserted in the Lawsuit relating to the alleged misclassification of HRMs, such as the alleged failure to pay overtime compensation, failure to make contributions under ERISA, as well as any claim (whether asserted or unasserted) for failure to keep accurate records, failure to provide accurate wage statements, late payment of wages during or upon termination of employment, and waiting time penalties, which causes of action include, but are not limited to, allegations that members of the Plaintiff Class were not paid all earned wages, including "straight time" wages, overtime compensation, meal and rest period premiums, and were not timely paid all wages, and were not paid all wages owing upon termination of employment during the Class Period. The release of claims under ERISA is limited to claims that arise from or are directly related to the alleged misclassification of HRMs as exempt employees, including claims for failure to make contributions to a 401(k) plan based on overtime that (allegedly) should have been paid, failure to keep records of such overtime, and breach of fiduciary duties based in any way on the misclassification of HRMs as exempt employees.

b. California Civil Code Section 1542 Waiver

With respect to the Released Claims (as defined in Paragraph 19(a) above), the members of the California sub-class and all members of the Plaintiff Class who 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.

c. Waiver of rights

i. The Parties hereto, including all Settlement Class Members, stipulate and agree that the consideration paid to the Settlement Class Members pursuant to this Agreement compensates the Settlement Class Members for all wages, including wages not timely paid, and reimbursements due to them, all penalties, all liability related to itemized wage statements and any compensation to which they may be entitled to as a result of the alleged violations of any state law or regulation, and any related penalties, including any waiting time penalties.

ii. By granting preliminary and final approval of the settlement, the Court will have reviewed this Agreement and concluded that the Plaintiff Class has been adequately compensated for all violations alleged in the Lawsuit and to which they otherwise may be entitled.

18. NO ADMISSION BY THE PARTIES

Defendant and the Released Parties deny any and all claims alleged in the Lawsuit and deny all wrongdoing whatsoever. Defendant continues to assert, *inter alia*, that the members of the Plaintiff Class have been properly classified as exempt employees, timely paid all wages owing in accordance with the law, and provided adequate itemized wage statements. This Agreement is neither a concession nor an admission, and shall not be used against Defendant or any of the Released Parties as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant or any of the Released Parties. Whether or not the settlement is finally approved, neither the settlement, nor any document, statement, proceeding, or conduct related to this Agreement, nor any reports or accounts thereof, shall in any event be:

a. construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or

b. disclosed, referred to or offered or received in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding, except for purposes of settling the Lawsuit pursuant to this Agreement.

19. CONFIDENTIALITY

a. Plaintiff, Defendant, Class Counsel, and Defendant's counsel shall not (i) initiate or cause the initiation of any communications concerning the settlement with any media organization and/or (ii) respond to or cause a response to be made to any communications concerning the settlement with any media organization. As used in this Section, "media organization" shall include, without limitation, print, broadcast, television, satellite and internet media.

b. The Parties agree that if they are contacted by a media organization then they will only state that this matter has settled.

c. Class Counsel will take all steps necessary to ensure that the Class Representative is aware of, and will adhere to, the restriction against any media comment on the settlement and its terms.

d. No Party will discourage or encourage members of the Plaintiff Class from filing Consent Forms, except as the Parties otherwise agree in writing. Nothing in this Section is meant to preclude a Party's counsel from providing legal advice to a client.

e. The Class Representative agrees to execute a separate settlement agreement, and will agree not to seek re-employment with any Defendant or any of their affiliates, and to a mutual release of all claims.

20. NULLIFICATION OF AGREEMENT

In the event: (i) the Court does not enter the Approval Order specified herein in substantially the same form as Exhibit "C" attached hereto; (ii) the Court does not finally approve the settlement as provided herein, including without limitation the releases in the same form and scope as set forth in Section 17; (iii) the Court does not issue a [Proposed] Final Judgment (as provided herein and in substantially the same form as Exhibit "E" attached hereto) which becomes final and not subject to any appeals; or (iv) the settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this settlement shall be treated as void *ab initio*. In such event, the Parties and any funds to be awarded under this settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the parties shall proceed in all respects as if this Agreement had not been executed; however, in this event, Defendant agrees to separately pay for the reasonable costs already incurred by Class Counsel for administration. The failure of the Court to award Class Counsel the amount of attorneys' fees and costs for which Class Counsel applies will not be a reason to nullify this Agreement.

21. RETURN OF DOCUMENTS AND INFORMATION

The Plaintiff, Plaintiff Class and Plaintiff's Counsel agree that none of the documents and information provided to them by the named Defendants shall be used

for any purpose other than prosecution of the Lawsuit. No later than ten (10) days after Plaintiff's Counsel/Class Counsel receives any Court-approved award of attorneys' fees, the Plaintiff and Plaintiff's Counsel/Class Counsel shall destroy or return to Defendant's counsel the original and all copies of any documents designated as "confidential" that Defendants produced or provided to Plaintiff, Plaintiff's Counsel and Class Counsel during the Lawsuit. Should Plaintiff's Counsel/Class Counsel elect to destroy documents designated as "confidential," Plaintiff's Counsel/Class Counsel shall certify under penalty of perjury that such documents have been destroyed.

22. REPRESENTATIONS AND WARRANTIES

Each party to this Agreement represents and warrants that he, she or it has not heretofore assigned or transferred, or purported to assign or transfer, any of the claims released pursuant to this Agreement to any other person and that he, she, or it is fully entitled to compromise and settle same.

23. APPLICABLE LAW

All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of Florida applicable to agreements to be wholly performed within the State of Florida.

24. OWN COUNSEL

Each party hereto acknowledges that he, she, or it has been represented by counsel of his, her or its own choice throughout all of the negotiations that preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement.

25. FURTHER ACTS AND DOCUMENTS

The parties hereto agree to do such acts and execute all such documents necessary to effectuate the intent of this Agreement.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and will be effective upon execution by all parties. Facsimile signatures shall be deemed original signatures for all purposes.

27. HEADINGS

The headings contained in this Agreement are for reference only and are not to be construed in any way as a part of the Agreement.

28. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements and discussions. Each of the parties covenants that he, she, or it has not entered into this Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each party further covenants that the consideration recited herein is the only consideration for entering into this Agreement and that no promises or representations of another or further consideration have been made by any person. This Agreement may be amended only by an agreement in writing duly executed by all Parties hereto.

29. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, assigns and successors-in-interest.

30. DRAFTING

Each party hereto has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party as drafter of this Agreement.

31. SEVERABILITY

In the event any covenant or other provision herein is held to be invalid, void, or illegal, the same shall be deemed severed from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein. If any covenant, condition, or other provision herein is held to be invalid due to its scope or breadth, such covenant, condition, or other provision shall be deemed valid to the extent of the scope or breadth permitted by law. Notwithstanding the foregoing, the release set forth in Section 17 in this Agreement is an essential part of the Parties' agreement. If such release is not valid or is modified in any way, Defendant has no obligation under this Agreement.

32. INCORPORATION OF EXHIBITS

All exhibits attached to this Agreement are hereby incorporated by reference as though set forth fully herein and are a material part of this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration.

33. AUTHORITY

Each party hereto warrants and represents that each of the persons or entities executing this Agreement is duly empowered and authorized to do so.

34. WAIVER OF RIGHT TO OBJECT

Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated and further agrees to remain a part of the Plaintiff Class and agrees not to object to any of the terms of this Agreement. Non-compliance with this Section shall be void and of no force or effect.

35. DISPUTE RESOLUTION

The Court shall have continuing jurisdiction to resolve any dispute that may arise with regard to the terms and conditions of this Agreement as set forth herein.

36. NOTICE

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement (other than the Consent Form) shall be in writing and shall be delivered personally, telecopied, or mailed postage pre-paid by first class mail to the following persons at their addresses set forth as follows:

Plaintiff's Counsel/Class Counsel:

Mitchell Feldman, Esq.
FELDMAN MORGADO P.A.
501 North Reo Street
Tampa, Florida 33609

Defendants' Counsel:

Juan C. Enjamio, Esq.
HUNTON & WILLIAMS LLP
1111 Brickell Avenue, Suite 2500,
Miami, Florida 33131

SHD

WHEREFORE, Plaintiff, on their own behalf and on behalf of the Plaintiff Class, and Defendants, by their duly authorized agent, have executed this Agreement as of the dates set forth below.

Lizeth Lytle

 Lizeth Lytle

Dated: 08-13-2014

Lowe's Home Centers, LLC

Dated: 8/18/14

By: Scott M. Purvis

Scott M. Purvis
VP, Human Resources

540

EXHIBIT A

LIZETH LYTLE, *Individually and on Behalf of all Others Similarly Situated who Consent to their Inclusion in a Collective Action*

v.

**LOWE'S HOME CENTERS, INC., LOWE'S HIW, INC.
AND LOWE'S COMPANIES, INC.**

Case No. 8:12-cv-1848-T-33TBM

To: You (*the person that this letter was addressed to*), along with present and past employees of Lowe's Home Centers, Inc. or Lowe's HIW, Inc., both now known as Lowe's Home Centers, LLC, who are presently, or were employed, as Human Resources Managers and worked in excess of forty (40) hours in any week during the period January 10, 2011 through today who have not previously submitted a Notice of Consent in this action.

1. Purpose of this Notice

You may have already received a Notice advising You about the existence of this collective action against your current or former employer. The Court has allowed the parties in this case to send a second notice to advise You that You still have a right to join in this lawsuit and instruct You on the procedure for participating in this lawsuit if You choose to do so.

2. Description of the Lawsuit

Lizeth Lytle filed a lawsuit in the United States District Court for the Middle District of Florida on behalf of all similarly situated Human Resources Managers who are or were employed by Defendants, LOWE'S HOME CENTERS, INC. or LOWE'S HIW, INC. (both now known as Lowe's Home Centers, LLC). The Representative Plaintiff sued on behalf of herself and also on behalf of all other employees and former employees who are or were "similarly situated," because of their employment as a Human Resources Manager. You are believed to have worked as a Human Resources Manager for one of these Defendant companies. Lytle claims, through her lead attorney, Mitchell L. Feldman of Feldman Morgado, P.A., that You should have been paid overtime wages for all hours You worked over 40 (in a given work week) because You do not qualify for exemptions under the Fair Labor Standards Act that would allow the Defendants to not pay You your overtime wages.

The Defendants deny that they have violated the law in any way and maintain that You and all HRMs have been properly classified as exempt employees under the FLSA and are not entitled to any overtime payments. The Court has not made any determination that Lowe's has done anything wrong.

The parties have reached an agreement to settle this action, and the Court has granted approval of the settlement pending the expiration of this notice period. You can view the settlement agreement at **WWW.LOWESHRMANAGERFLSACLAIM.COM**.

3. Your Legal Rights & Options

A. You May File Your Claim for Overtime Wages by Opting into this Lawsuit

If You wish to file a claim that will allow You to collect a proportionate share of the settlement of this action, You **must** complete the enclosed Notice of Consent form and deliver it to:

**MITCHELL L. FELDMAN, ESQ.
FELDMAN MORGADO, P.A.
501 NORTH REO STREET
TAMPA, FLORIDA 33602**

You must complete the Notice of Consent form, mailed and postmarked by [*insert date 30 days from date of mailing*], or You will **NOT** be allowed to participate in this lawsuit, including the settlement described above. As explained herein, You may alternatively email or fax the Consent form by the due date.

By “opting in,” and filing your Consent form, You gain the right to receive a payment from the settlement in this case, but You give up your right to separately sue Defendants for the same legal claims brought in this lawsuit. If You opt-in, your attorneys’ fees and costs will be on a pure contingency basis, that is, You will not be charged any fees or costs regardless of the outcome. The Plaintiff attorneys has sought a court determined amount of attorney’s fees from the settlement. **The decisions and agreements made and entered into by the Representative Plaintiff will be binding on You if You join this lawsuit.**

You will receive damages only if (1) You OPT IN and **JOIN** the lawsuit and (2) the Court determines that Your claims are similar to others to be pursued as one lawsuit. The Court has preliminarily approved the fairness of the settlement.

B. You May Choose Not to Join the Lawsuit

You are not required to join the lawsuit. It is your choice as to whether You wish join. However, if You do not participate in the lawsuit, You will not be eligible to receive any portion of any recovery obtained by those who do join the lawsuit or settle it on a class wide basis.

C. Retaliation Against You is Forbidden and Unlawful under the Fair Labor Standards Act (FLSA).

Federal law prohibits the Defendants from taking any adverse employment action against you, including terminating your employment, discriminating against You, altering your wages or the terms of your employment, or retaliating against You in any manner if those decisions are made because You have opted into this lawsuit by filing the consent form, or otherwise for making a claim for your overtime wages. Such conduct can be deemed an adverse employment action in violation of the FLSA. Filing an Opt In Consent Form, however, does not mean You do not still have to do Your job and follow the existing policies and work rules should You work for the Defendants, and Defendants may still discipline You (including terminating your employment) if You fail to perform your duties or follow the existing policies. If You believe You have been

penalized, disciplined, punished, threatened, intimidated or discriminated against in any way as a result of your receiving this notification, your considering whether to complete and submit the Opt-in Consent Form, or having submitted the Opt-in Consent Form, You may report such conduct by using Lowe's normal complaint procedures or by contacting the law firm of Feldman Morgado, P.A., at the numbers provided below.

D. Right to a Lawyer

The named Plaintiff, Lizeth Lytle, has hired the law firm of Feldman Morgado, P.A. to represent her interests and those who opt-in elect to have this firm represent them as well. You will not have to pay any attorneys' fees. Plaintiff's counsel has requested payment of fees as a part of the settlement to be paid by the Defendants. You are not required by law to hire Feldman Morgado, P.A. and You may represent yourself or independently hire your own firm.

Further information about this lawsuit may be obtained by writing or calling counsel for the Representative Plaintiff at the address and contact information listed below, as well as from the website: **WWW.LOWESHRMANAGERFLSACLAIM.COM**. The website is maintained by Plaintiff's counsel and not by the Court. The pleadings and other records in this case may be inspected and copied during regular office hours at the Clerk's Office, United States District Court for the Middle District of Florida, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, Florida 33602. For a fee, You may also access all records in this case online by utilizing the Public Access to Court Electronic Records (PACER) service at <http://pacer.psc.uscourts.gov>.

To opt-in, You must complete the Opt-in Consent Form and send it by U.S. mail, fax, or email to:

Mitchell L. Feldman, Esq.
Feldman Morgado, PA
501 North Reo Street
Tampa, Florida 33602
PH: 813-639-9366
FX: 813-639-9376
LOWESCONSENT@ffmlawgroup.com
mfeldman@ffmlwagroup.com
www.floridatrialattorneys.net

Counsel for the Representative Plaintiff must file your Opt-in Consent Form with the Court by no later than *[insert # days from date of mailing]*. **If You want to opt-in, please ensure that counsel receives your Opt-in Consent Form well before this date** or You may lose your right to opt-in. You should receive a confirmation from Feldman Morgado that your consent form has been received and filed with the Court within approximately 14 days after You send it. If You do not receive this confirmation, Feldman Morgado may not have received it and You should contact the law firm to avoid being foreclosed from participating in this suit. The Declaration of Consent to Join can also be found at the firm's website: **LOWESHRMANAGERFLSACLAIM.COM**

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT, THE HONORABLE VIRGINIA A. COVINGTON. PLEASE DO NOT CONTACT THE COURT WITH ANY QUESTIONS. ALL QUESTIONS CAN BE DIRECTED TO PLAINTIFF'S COUNSEL, FELDMAN MORGADO, PA.

HR MANAGER CLAIMS CALL CENTER: 888-551-212 (TO BE SET BY PLAINTIFF'S COUNSEL)

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

**LIZETH LYTLE, Individually,
and on behalf of All Others
Similarly Situated Who Consent to
Their Inclusion in a Collective
Action;**

Plaintiff,

v.

**CASE NO. 8:12-cv-1848-T-33TBM
COLLECTIVE ACTION**

**LOWE'S HOME CENTERS, INC.,
LOWE'S HIW, INC., AND LOWE'S
COMPANIES, INC.**

Defendants.

OPT-IN CONSENT FORM

DECLARATION OF CONSENT TO JOIN

I, _____ [please legibly provide your full legal name], elect to exercise my right to opt-in and join the above-styled Fair Labor Standards Act case.

I have worked as a store Human Resources Manager for LOWE'S HOME CENTERS, INC. or LOWE'S HIW, INC., and worked in excess of forty hours (40) per week in at least one week during the period January 10, 2011 through today.

I understand that by consenting to opt-into this case, I am authorizing the Representative Plaintiff, Lizeth Lytle and her attorneys, Mitchell L. Feldman, Esq. and Feldman Morgado, P.A., to act as my agents and on my behalf. I understand that the Court has preliminarily approved a settlement of this action, and I wish to join in the settlement. I understand that my pro rata share of the settlement will be calculated by Class Counsel as set forth in the settlement agreement, that it is based upon the total number of potential class members to opt-in to the class, and that it is fixed and not subject to further negotiations with the Defendant. By signing this consent I hereby represent that I do not object to the settlement.

I declare under penalty of perjury that the foregoing is true and correct.* Executed on _____ [please provide today's date].

SIGNATURE: _____

MAILING ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

*This form does *not* need to be notarized.

PLEASE MAKE SURE THAT ALL OF THE REQUESTED INFORMATION IS INCLUDED ON YOUR FORM AND THAT YOUR HANDWRITING IS LEGIBLE.

ONCE YOU HAVE COMPLETED YOUR FORM, PLEASE SEND IT VIA U.S. MAIL, FAX, OR EMAIL IT TO FELDMAN MORGADO, PA AND MITCHELL FELDMAN, ESQ. at the following email address as soon as possible: LOWESCONSENT@FFMLAWGROUP.COM.

MR. FELDMAN MUST FILE YOUR CONSENT FORM WITH THE COURT BY NO LATER THAN [insert date].

MITCHELL L. FELDMAN, ESQ.
FELDMAN MORGADO, P.A.
501 NORTH REO STREET
TAMPA, FLORIDA 33602
PH: 813-639-9366
FX: 813-639-9376
mfeldman@ffmlawgroup.com
www.floridatriallawattorneys.net
hr manager call center: 888-5551212

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:12-cv-1848-T-33TBM

LIZETH LYTLE, Individually,
and on behalf of All Others
Similarly Situated Who Consent to Their
Inclusion in a Collective Action,

Plaintiff,

v.

LOWE'S HOME CENTERS, INC., et al.,

Defendants.

**[PROPOSED] ORDER GRANTING APPROVAL
OF COLLECTIVE ACTION SETTLEMENT**

The Court, having reviewed the Joint Motion for Approval of Settlement, the Collective Action Settlement Agreement ("Settlement Agreement"), the second proposed Notice to the class, the Consent Form, and the Proposed Order Granting Approval, and in recognition of the Court's duty to make a determination as to the fairness and reasonableness of the collective action settlement, THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

1. The Court finds that the Settlement Agreement, incorporated in full by this reference and made a part of this Order of Approval, is fair, reasonable, and adequate; the Court notes that Defendant, Lowe's Home Centers, LLC ("Defendant" or Lowe's)¹ has agreed to pay up to the maximum potential settlement payment of Nine Million Five Hundred Thousand

¹ Lowe's Home Centers, Inc. (a named Defendant) was converted to Lowe's Home Centers, LLC on or about November 1, 2013. Lowe's HIW, Inc. (another named Defendant) was merged into Lowe's Home Centers, LLC on or about December 31, 2013.

Dollars (\$9,500,000.00) to Plaintiff, Class Members, Class Counsel, and the Administrator (in the manner set forth in the Settlement Agreement) in full satisfaction of the claims more specifically described in the Settlement Agreement.

2. The Class consists of all persons who were employed as a Human Resources Manager by one of the Defendant at any time from January 10, 2011 through the date of this Order.

3. The Court finds and determines that the payments to be made to the Settlement Class Members as provided for in the Settlement Agreement are fair and reasonable. It further appears to the Court that the Settlement is fair and reasonable to Class Members when balanced against the probable outcome of further litigation relating to de-certification of the class, liability and damages issues, and potential appeals of rulings. It further appears that significant formal and informal discovery, investigation, research, and litigation have been conducted, such that counsel at this time are able to reasonably evaluate their respective positions. It further appears that settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It also appears that the proposed Settlement Agreement has been reached as the result of intensive, informed and non-collusive negotiations between the Parties.

4. The Court finds for purposes of this settlement only, that the members of the collective action are similarly situated as required under section 216(b) of the Fair Labor Standards Act, and therefore certification as a collective action (for settlement purposes only) is appropriate.

5. The Joint Motion for Order Approving Settlement of a Collective Action is hereby GRANTED. The Court hereby certifies the collective action for settlement purposes only

pursuant to the terms and conditions contained in the Settlement Agreement. The Settlement Class Members shall be bound by the Settlement Agreement. The Settlement Agreement is ordered approved, and all terms and provisions of the Settlement Agreement should be and hereby are ordered to be consummated.

6. The Court finds that Plaintiff and Plaintiff's attorneys have fairly represented and protected the interests of the Class. It further appears to the Court that Plaintiff's attorneys are experienced and capable of fairly and competently representing the interests of the Class.

7. It further appears to the Court that an incentive award of Seven Thousand Dollars (\$7,000.00) to Plaintiff as the Class Representative is fair, reasonable and justified given the amount of time and effort she has expended during the course of the litigation, and the value of the individual claims the Class Representative is settling. Likewise, it appears to the Court that an incentive award of One Thousand Dollars (\$1,000.00) each to the following individuals (Robert Seguinot, Melissa Colette Murphy, Freida Kelley, Carly Sarah Bolton and Denise Giambrone) is reasonable and justified.

8. It further appears to the Court that the proposed Notice advises of the pendency of the Collective Action and of the proposed Settlement Agreement, of Court approval of the proposed Settlement Agreement, and the claim submission timing and procedures. The document fairly and adequately advises Class Members of where to find the terms of the proposed Settlement Agreement and the benefits available to Class Members thereunder.

9. The mailing to the present and/or last known addresses of the Class Members constitutes an effective method of notifying Class Members of their rights with respect to the Collective Action and Settlement Agreement.

ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:

a. Within fourteen (14) days from entry of this Order, Class Counsel (or its designee) shall provide the Court-approved Notice and Consent Form approved by the Court, in substantially the same form as Exhibits "A" and "B" to the Settlement Agreement, to Members of the Plaintiff Class who have not already opted-in. The Notice and Consent Form shall be mailed via first class United States Mail only to those members of the Plaintiff Class who have not already filed consents to join this Lawsuit. Before the first mailing, Class Counsel (or its designee) will perform a National Change of Address search, and will perform one skip trace as to any Notices (and accompanying documents) that are returned by the post office for invalid addresses within five (5) days of receipt of such returned Notice. Those Members of the Plaintiff Class who receive Notice pursuant to one skip trace shall be informed (via an insert in the Notice) that his or her time to submit a Claim Form to this Administrator shall be the longer of (i) Fourteen (14) days from the date Notice is mailed to the updated address, or (ii) the Submission Date. Upon Request, Class Counsel shall provide Defendant's Counsel with the identity of all members of the Plaintiff Class who were sent Notice as a result of the skip trace and whose Notice was again returned.

b. The Parties may provide or submit additional notice to the Plaintiff Class only if they mutually agree in writing.

c. To be considered timely, a Consent Form must be submitted to Class Counsel (or its designee) and post-marked on or before thirty (30) days from the date of mailing (the "Submission Date"). Those members of the Plaintiff Class who receive Notice pursuant to the one skip trace shall have until the longer of (i) Fourteen (14) days from the date Notice is mailed

to the updated address or (ii) the Submission Date to submit a Consent Form, whichever is later. The submission of a Consent Form will be deemed completed on the earlier of the date of receipt by Class Counsel (or its designee) or the postmark date on the envelope containing the Claim Form.

d. Within three (3) days of the Submission Date or of the latest date when a Plaintiff Class Member may submit a Consent Form after a skip trace, whichever is latest, Class Counsel shall file with the Clerk of the Court all Consent Forms received by the Submission Date. Class Counsel shall advise Defendant's counsel upon request of the number of Consent Forms received.

e. IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

f. IT IS FURTHER ORDERED that, following the notice procedure described above, the Court will enter final judgment in this matter. Final judgment will not be entered until after the expiration of the above deadlines to allow members of the Plaintiff Class to opt in.

Dated: _____

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

EXHIBIT D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:12-cv-1848-T-33TBM

LIZETH LYTLE, Individually,
and on behalf of All Others
Similarly Situated Who Consent to Their
Inclusion in a Collective Action,

Plaintiff,

v.

LOWE'S HOME CENTERS, INC., et al.,

Defendants.

[PROPOSED] ORDER DISMISSING COLLECTIVE ACTION WITH PREJUDICE

The parties have submitted their Collective Action Settlement Agreement (the "Settlement"), which this Court previously approved in its [date] order. In accordance with the approval order, a second Notice and Consent Form have been sent to Members of the Plaintiff Class who have not already opted-in. A total of [number] of Members of the Plaintiff Class have chosen to opt in to this action.

Having received, considered, and approved the Settlement; having reviewed and considered the supporting papers filed by the parties and the application for an award of Plaintiffs' attorneys' fees and reimbursement of expenses, the Court HEREBY ORDERS and MAKES DETERMINATIONS as follows:

1. The Plaintiff Class covered by this order consists of all persons who were employed as a Human Resources Manager ("HRM") by one of the Defendant at any time from January 10, 2011 through the [date of Order granting approval].

2. The “Settlement Class” in this order refers collectively to all members of the Plaintiff Class who submitted a timely and properly completed Consent Form.

3. For the reasons stated in the Court’s prior approval order, the Court finds and determines that the Settlement is ordered finally approved, and all terms and provisions of the Settlement should be and hereby are ordered to be consummated.

4. The Court hereby orders that payment be made to the Settlement Class Members in accordance with the terms of the Settlement Agreement.

5. Pursuant to the Settlement Agreement, all members of the Settlement Class are permanently barred from prosecuting against Lowe’s Home Centers LLC and all Defendant and all the other entities named as Defendants in the Lawsuit (Lowe’s Home Centers, Inc.; Lowe’s HIW, Inc.; Lowe’s Companies, Inc.; and the Administrative Committee of Lowe’s Corporation, Inc.) and each of their respective past, present and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, 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 Defendants any individual or class claims that were released as set forth in the Settlement.

6. 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 asserted in the Lawsuit or that relate in any way to the classification of HRMs as exempt

employees, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, or that arise under any state wage and hour laws, the FLSA, 29 U.S.C. § 201, *et seq.* (except as otherwise stated in subparagraph (b) immediately below), and/or ERISA, 29 U.S.C. § 1001 *et seq.* (except as limited immediately below), whether for economic damages, non-economic damages, restitution, penalties, wages, liquidated damages, interest, or attorneys' fees arising out of the claims at issue, including: the causes of action asserted in the Lawsuit relating to the alleged misclassification of HRMs, such as the alleged failure to pay overtime compensation, failure to make contributions under ERISA, as well as any claim (whether asserted or unasserted) for failure to keep accurate records, failure to provide accurate wage statements, late payment of wages during or upon termination of employment, and waiting time penalties, which causes of action include, but are not limited to, allegations that members of the Plaintiff Class were not paid all earned wages, including "straight time" wages, overtime compensation, meal and rest period premiums, and were not timely paid all wages, and were not paid all wages owing upon termination of employment during the Class Period. The release of claims under ERISA is limited to claims that arise from or are directly related to the alleged misclassification of HRMs as exempt employees, including claims for failure to make contributions to a 401(k) plan based on overtime that (allegedly) should have been paid, failure to keep records of such overtime, and breach of fiduciary duties based in any way on the misclassification of HRMs as exempt employees.

7. This action and the claims alleged in the Complaint filed in the action are hereby ordered dismissed with prejudice, each side to bear its own costs and attorneys' fees except as provided by the Settlement and below.

8. The Court finds that an award of attorneys' fees of _____ and reimbursement of costs and expenses of \$___ is fair, reasonable and justified given the time and effort Class Counsel has expended pursuing the Class' claims, as well as the substantial benefit conferred upon the Class as a result of such time and effort. The Court approves the application by Class Counsel for attorneys' fees and costs in the amount of \$_____.

9. Without affecting the finality of this Final Order in any way, this Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

IT IS SO ORDERED.

Dated: _____

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

EXHIBIT E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:12-cv-1848-T-33TBM

LIZETH LYTLE, Individually,
and on behalf of All Others
Similarly Situated Who Consent to Their
Inclusion in a Collective Action,

Plaintiff,

v.

LOWE'S HOME CENTERS, INC., et al.,

Defendants.

[PROPOSED] FINAL JUDGMENT

WHEREAS, on _____, 2014, this Court granted approval to a settlement of this action, which settlement would become final after the expiration of the Notice period;

WHEREAS, the Court has found that the settlement is fair, reasonable and adequate; and

WHEREAS, the Court approved the notice sent to the Plaintiff Class (as that term is defined in the Settlement Agreement), finding that it provided adequate information to the potential members of the collective action, was consistent with due process, and was given in the manner prescribed by the Settlement Agreement and the Court's order approving the settlement:

WHEREAS, pursuant to the Settlement Agreement, all Settlement Class Members, as that term is defined in the Settlement Agreement between the Parties, and their successors are conclusively deemed to have released any and all “Released Claims” against the “Released Parties” as described below and in paragraph 17 of the Settlement Agreement against Defendants and each of their respective past, present and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, 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 (the “Released Parties”) from the “Released Claims,” as defined below and in paragraph 17 of the Settlement Agreement.

(a) Released Claims by all Approved Claimants

For purposes of this 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 asserted in the Lawsuit or that relate in any way to the classification of Human Resources Managers (“HRMs”) as exempt employees, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, or that arise under any state wage and hour laws, the FLSA, 29 U.S.C. § 201,

et seq. (except as otherwise stated in subparagraph (b) immediately below), and/or ERISA, 29 U.S.C. § 1001 *et seq.* (except as limited immediately below), whether for economic damages, non-economic damages, restitution, penalties, wages, liquidated damages, interest, or attorneys' fees arising out of the claims at issue, including: the causes of action asserted in the Lawsuit relating to the alleged misclassification of HRMs, such as the alleged failure to pay overtime compensation, failure to make contributions under ERISA, as well as any claim (whether asserted or unasserted) for failure to keep accurate records, failure to provide accurate wage statements, late payment of wages during or upon termination of employment, and waiting time penalties, which causes of action include, but are not limited to, allegations that members of the Plaintiff Class were not paid all earned wages, including "straight time" wages, overtime compensation, meal and rest period premiums, and were not timely paid all wages, and were not paid all wages owing upon termination of employment during the Class Period. The release of claims under ERISA is limited to claims that arise from or are directly related to the alleged misclassification of HRMs as exempt employees, including claims for failure to make contributions to a 401(k) plan based on overtime that (allegedly) should have been paid, failure to keep records of such overtime, and breach of fiduciary duties based in any way on the misclassification of HRMs as exempt employees.

(b) California Civil Code Section 1542 Waiver

With respect to the Released Claims (as defined in Paragraph 19(a) of the Settlement), the Settlement 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.

This Court hereby enters judgment in this case, and dismisses it with prejudice, in accordance with the terms of the Settlement Agreement (“Settlement”) and the Order granting approval. The Court hereby permanently enjoins and restrains all individuals from asserting any and all claims that were released pursuant to the Settlement Agreement.

Without affecting the finality of this Judgment in any way, the Court reserves exclusive and continuing jurisdiction over this action, the named Plaintiff, the Settlement Class, and the Defendants for the purposes of supervising the implementation, enforcement, construction and interpretation of the Settlement, and all orders and judgments entered in connection therewith.

IT IS SO ORDERED.

Dated: _____

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LIZETH LYTLE, Individually,
and on behalf of All Others
Similarly Situated Who Consent to
Their Inclusion in a Collective
Action;

CASE NO.: 8:12-cv-1848-T-33TBM

Plaintiff,

v.

LOWE'S HOME CENTERS, INC.,
LOWE'S HIW, INC., AND LOWE'S a Foreign
Corporation,

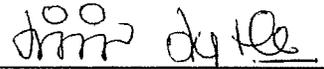
Defendant.

DECLARATION OF LIZETH LYTLE

1. My name is LIZETH LYTLE.
2. I am the named Plaintiff in this case, and class representative.
3. I have executed the settlement agreement on behalf of myself, and all others similarly situated, the class of Human Resources Managers.
4. The settlement agreement and all terms contained herein were explained to me and I believe the terms to be a fair and reasonable resolution of the wage claims I brought on behalf of myself and the class of similarly situated Human Resource Managers of Lowe's when taking into consideration the risks and costs.
5. The attorney's fees of 1/3 of the gross common fund are fair and reasonable and within the percentage agreed upon in the contingency fee agreement I executed with the law firm. A copy is attached as exhibit A.

6. I agree that my attorneys should be awarded attorney's fees of 1/3 of the maximum common fund established.
7. I understood when settling that my attorneys would seek attorney's fees of 1/3 of the total maximum common fund, as their attorney's fees, and that the settlement for the class would be distributed based upon the net remainder of the common fund after fees, costs and incentive awards were deducted.
8. I made the decision to settle this case, and believe it is in the best interests of the class.

UNDER PENALTY OF PERJURY, I HAVE READ THE FOREGOING DECLARATION AND STATE THE FACTS HEREIN TO BE TRUE AND CORRECT UNDER 28 U.S.C. 1746 AND SECTION 92.525, FLORIDA STATUTES ON THIS 13 DAY OF AUGUST, 2014.



Lizeth Lytle