

FILED
Los Angeles Superior Court

SEP 14 2009

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

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

Plaintiff,

v.

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

Defendants,

CASE NO. BC260702

CLASS ACTION

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

**AMENDED NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[To be heard concurrently with Motion for
Final Approval of Attorneys' Fees and
Costs and Final Approval of Incentive
Award]

DATE: September 22, 2009
TIME: 8:30 a.m.
DEPT: 47

Complaint filed: October 29, 2001

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1 TO ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 22, 2009, at 8:30 a.m. in Department 47 of
3 the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California, Plaintiff will and
4 hereby does move the Court to:

- 5 (1) grant final approval of the Settlement between Plaintiff, on behalf of the
6 Class, and Defendant, Lowe's H.I.W., Inc.;
- 7 (2) approve the payment to Epiq Systems from the Settlement Fund for the
8 administration of the Payout Fund;
- 9 (3) approve the attorneys fees, costs, and incentive payments pursuant to the
10 contemporaneously filed motion;
- 11 (4) enter final judgment in this action in the form of the Order and Final
12 Judgment submitted herewith; and
- 13 (5) retain continuing jurisdiction over the implementation, interpretation,
14 administration, and consummation of the settlement.

15 This Motion is based on the following memorandum of points and authorities, the
16 attached declarations of Stanley D. Saltzman, Marcus J. Bradley and R. Rex Parris, as well as
17 upon the pleadings and other records on file with the Court in this matter, and upon such other
18 and further oral and/or documentary evidence as may be properly presented at the hearing on this
19 motion.

20
21 DATED: September 14, 2009

**MARLIN & SALTZMAN
R. REX PARRIS LAW FIRM**

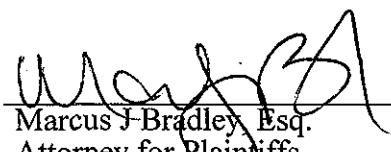
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24 By: 
Marcus J. Bradley, Esq.
Attorney for Plaintiffs
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Representative Plaintiff, Willie Lopez, by and through Class Counsel, respectfully applies
4 to the Court for Final Approval of (1) the class action settlement, and (2) entry of judgment. (By
5 separate motion, Plaintiff shall bring an unopposed motion for (1) incentive award to the class
6 representative, and (2) an award of attorneys' fees and costs.)¹ Said request shall be based upon
7 this Application and upon the declarations of class counsel Stanley Saltzman, Marcus Bradley
8 and R. Rex Parris.

9 Under the terms of the Settlement, the class will share in a Twenty-Nine Million Five
10 Hundred Thousand Dollar (\$29,500,000) settlement (the "Maximum Settlement Amount"). The
11 Maximum Settlement Amount to be paid by Defendant is "all inclusive." It is intended to
12 include resolution of all the claims asserted in the action, and related claims which could have
13 been asserted (all as set forth in the release included in the notice of settlement), as well as all
14 attorney's fees and costs of the Plaintiff class counsel, all costs of administration of the
15 settlement, and the enhancement award to be paid to the representative Plaintiff.

16 As explained in further detail below, the Court should grant final approval because: The
17 settlement is fair and reasonable and the product of arms-length, good-faith negotiations by
18 experienced counsel presided over by a highly qualified mediator; due notice of the settlement
19 was provided to the class; no objections have been made to the settlement; and there is good
20 cause to grant final approval of the settlement.

21 **A. PROCEDURAL HISTORY**

22 This action was originally filed on October 21, 2001, captioned as *Cynthia Parris v.*
23 *Lowe's HIW, Inc. et. al.* Subsequently, Cynthia Parris was permitted to withdraw as a class
24 representative, and the case was restyled *Lopez, et al. v. Lowe's HIW, Inc., et al.* After Plaintiff
25 Parris withdrew, Defendant moved this Court for an order that the remaining Plaintiff, Willie
26

27 ¹ The parties will lodge with the Court a jointly agreed to [Proposed] Order of Final
28 Judgment and [Proposed] Order Re: Incentive Award to Plaintiff and Award of Attorney's Fees and
Costs prior to the September 22, 2009 hearing on the within Motions.

1 Lopez, be required to post a cost bond, based on the fact that he was an out-of-state Plaintiff.
2 That motion was granted, and Plaintiff was required to post a bond in the amount of \$50,000.00,
3 in order to be permitted to proceed with the action. A cash deposit in that amount was made, as
4 required, and has been on deposit with the Court ever since.²

5 The essence of the recovery sought in this case was that the class members, both the
6 current and former hourly employees of the defendant, have worked "off the clock" without
7 proper remuneration. The specific allegations of the operative Complaint allege violations of
8 *Labor Code* section 1194 (failure to pay straight time and overtime compensation), *Labor Code*
9 sections 201 through 203 (failure to pay wages at the time of discharge) and *Business &*
10 *Professions Code* section 17200, *et seq.* Defendant has denied, and continues to deny, all the
11 allegations of the Complaint, and alleges that Plaintiff and the members of the Plaintiff Class
12 were properly compensated for all work according to the law.

13 The very first responsive pleading filed by the Defendant sought dismissal of the action
14 on the grounds that the action was not filed in good faith, and could not be maintained. That
15 motion was properly denied by this Court. The last motion ruled upon by this Court, almost one
16 year ago, was defendant's motion for leave to amend its Answer. From start to finish, the parties
17 were engaged in ongoing pleading challenges, with Plaintiff's case always at risk.

18 After completing its initial written discovery, depositions and pleadings, the proposed
19 class sought from Defendant a class list so that it could mail a pre-certification notice letter to the
20 putative class members, in order to facilitate further investigation of the case and its possible
21 certification. That motion was denied by Judge Karlin, sitting on assignment, and led to the
22 appellate court's published opinion permitting and authorizing the requested pre-certification
23 mailing. Eventually, following yet further comprehensive discovery, Plaintiff's motion for
24 certification of the class was denied. Plaintiff's appeal of this "death knell" ruling resulted in an
25 appellate ruling which reversed and ordered that the class be certified. While post-certification
26

27
28 ² That cost bond will be the subject of a stipulation for its release, at the time of final approval.

1 trial preparation was ongoing, and with dozens of class members depositions taking place, the
2 parties finally reached this settlement.

3 **B. DISCOVERY AND INVESTIGATION BY THE PARTIES**

4 The parties hereto have thoroughly investigated all of the facts relevant to the claims
5 pursued. In that regard, they have conducted substantial formal and informal discovery in
6 connection with the lawsuit; have researched and briefed the legal and factual issues relating to
7 the claims and defenses of the lawsuit; have pursued three separate requests for appellate review
8 which have resulted in one published and one unpublished decision; and have taken in excess of
9 75 depositions. In addition, as a result of both a pre-class certification mailing to all then current
10 proposed class members, and the subsequent formal Notice of Class Certification which was
11 mailed three years later, and mailing of the Notice Packets following preliminary approval of the
12 settlement, class counsel have had the opportunity to communicate with a substantial number of
13 class members, and have had documented communications with over 1,000 such persons. (A
14 more fuller description of the extensive activities of counsel can be found in the Task & Time
15 Analysis Chart attached to the Declaration of Stanley D. Saltzman.)

16 Throughout this time, the Defendant has also been actively litigating the matter, and in
17 turn has also been preparing itself for the trial of this matter. As a result, by the time this
18 settlement was reached, both sides had thoroughly prepared themselves for either trial or
19 settlement, and were prepared to negotiate potential resolution from a position of full knowledge
20 and expertise on the issues.

21 Armed with this extensive body of knowledge and analysis, the parties engaged in the
22 mediation with Mr. Hunter Hughes, an attorney with the Atlanta, Georgia firm of Rogers &
23 Hardin. Mr. Hughes has a nationwide litigation and mediation practice. After a full day and
24 evening of negotiations, the settlement was accomplished. The settlement reached takes into
25 account the strengths and weaknesses of each side's position and the uncertainty of how the case
26 might conclude if fully litigated. Recognizing the strongly divergent views, and the years of
27 litigation, and with the guidance of the mediator, the parties were able to negotiate a fair
28 settlement. Plaintiff Class, as well as the defendant, necessarily took into account the difficulties

1 and delays inherent in such litigation, including yet further potential appellate proceedings.
2 Plaintiffs are also aware of the burdens of proof necessary to establish liability for the claims
3 asserted in the action, as well as Lowe's defenses thereto, the difficulties in establishing damages
4 for Plaintiffs, and the potential challenges at trial to the class certification. The negotiations were
5 at all times conducted professionally and at arm's length, and have produced a result that the class
6 believes to be in its best interests.

7 **C. PRELIMINARY APPROVAL**

8 After several months of negotiating the final terms of the Class Action Settlement
9 Agreement and notice documents, Plaintiff moved, without opposition, that the Court approve
10 the settlement and direct notice to the class. The court granted Plaintiff's motion on April 23,
11 2009, finding that the settlement falls within the "range of reasonableness" and "that the
12 Settlement is the result of arms-length negotiations conducted after Class Counsel had
13 thoroughly and adequately investigated the claims and became familiar with the strengths and
14 weaknesses of those claims." (Order Granting Plaintiff's Motion for Preliminary Approval,
15 "Preliminary Approval Order") (p. 2, ¶ 2.)

16 As a result, the Court approved Class Notice, concluding "that the Notices of Settlement
17 and Claim Form and the procedure set forth in the Settlement Agreement for providing notice to
18 the Class will provide the best notice practicable, satisfies all notice requirements, adequately
19 advises Class Members of their rights under this Settlement, and therefore meets the
20 requirements of due process." *Id.* at ¶3.

21 At the hearing on Preliminary Approval, the Court also appointed Epiq Systems as the
22 Claims Administrator. The Court also ordered a Final Class Settlement Approval Hearing to be
23 held on September 21, 2009, which was later continued to September 22, 2009. Promptly
24 following the entry of the Order Granting Preliminary Approval, the Claims Administrator
25 prepared final versions of the Notice Packages, incorporating into them the relevant dates and
26 deadlines set forth in Order.

27 ///

28 ///

1 **D. DISSEMINATION OF CLASS NOTICE**

2 As set forth in the Declaration of Robert Oseas, Project Manager in the Class Action &
3 Claim Solutions division of Epiq Systems, Inc., which is submitted herewith:

4 On May 13, 2009, Epiq Systems received an electronic file containing the information of
5 potential Class Members. These records were sent through the National Change of Address
6 (NCOA) database to ensure that the most current available addresses were captured and used for
7 the notice mailing. The resulting records were then compared to the potential Class Member
8 records used for the Class Certification Notice that took place on August 6, 2008. Epiq removed
9 all duplicate records, then proceeded to enter the correct records into a specialized database,
10 resulting in 57,754 valid potential Class Member records. (Declaration of Robert Oseas ¶5).

11 On June 4, 2009, consistent with the Court's Order and at the direction of Counsel, Epiq
12 sent Notice Packages, which included the Notices, Claim Forms and Request for Exclusion
13 Forms to the class via U.S. First-Class Mail, postage prepaid, to 57,754 Class Members.
14 (Declaration of Robert Oseas ¶6).

15 As of September 10, 2009 Epiq has received 6,308 Notice Packages returned as
16 undeliverable by the United States Postal Service ("USPS"). Using additional information
17 provided by the USPS or in response to potential Class Member Requests, Epiq has re-mailed
18 1,298 Notice Packages. (Declaration of Robert Oseas ¶7).

19 Epiq also designated a post office box (under the name of Lopez v Lowe's HIW
20 Settlement, PO Box 4098, Portland, OR 97208) to receive Claim Forms, objections to the
21 settlement and other correspondence from potential Class Members. The post office box address
22 was published in the Notice Package mailed to Class Members. (Declaration of Robert Oseas
23 ¶8).

24 The Court authorized a 90-day claims period in this matter. Prior to the mid-point, Class
25 Counsel sought the cooperation of Defendant to authorize a Reminder Postcard to be sent to class
26 members who had not yet sent in claim forms, reminding them of the pending claim deadline.
27 After much negotiation, a Reminder Postcard was agreed to, and on July 20, 2009 a Reminder
28

1 Postcard was sent to all 53,864 potential Class Members who had not yet submitted a Claim
2 Form. (Declaration of Robert Oseas ¶10).

3 The provision of the Class Notice to class members and the administration of the notice
4 process as described above meet the requirements for the "best practicable" notice in this case as
5 necessary to protect the due process rights of class members. See Preliminary Approval Order,
6 ¶ 3 ("The parties' proposed notice plan is constitutionally sound because individual notice will be
7 mailed to all class members whose identities are known to the parties, and such notice is the best
8 notice practicable."); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of
9 "best practicable" notice with description of the litigation and explanation of opt-out rights
10 satisfies due process); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)
11 (best practicable notice is that which is "reasonably calculated, under all the circumstances, to
12 apprise interested parties of the pendency of the action and afford them an opportunity to present
13 their objections").

14 Accordingly, Epiq Systems mailed the Notice Packages in the manner provided in the
15 Settlement Agreement and took all other actions in furtherance of claims administration as
16 specified in the Settlement Agreement and so ordered by this Court.

17 E. FILING OF CLAIMS

18 As of September 10, 2009, Epiq has received and processed 15,008 Claim Forms.
19 (Declaration of Robert Oseas ¶11). These Claimants represent approximately 46% of the total
20 Gross Wages earned by potential Class Members who have received a Notice Package.
21 (Declaration of Robert Oseas ¶12). As a result of the claim administration process, therefore, at
22 least 46% of the total Gross Wages earned by potential Class Members will be paid from the
23 "remainder" of the Maximum Settlement Amount of \$29,500,000.

24 Furthermore, given that many of the employees were working in entry level positions, and
25 earning minimum wages, the average length of employment was relatively short, being a high
26 turnover in these positions. Even with all these factors, the average recovery per person making
27 a claim is over \$900.00, inclusive of fees, and \$600.00, net of fees. This is close to three weeks
28 pay per person at the average salary of about \$8.00 per hour paid to this group of employees,

1 assuming that they were given full time hours. In fact, a large part of the class were part-time
2 employees, thus making the average recovery "across the board" closer to a full month's pay.
3 Almost 15,000 will have made claims by the time the "last minute" claims have been processed.
4 That these claimants will receive claims totaling at least 46% of the funds available for claims,
5 such a after consideration of the fees and costs claimed herein is truly remarkable. A claim rate
6 in that range, for a case involving so many minimum wage earners, over such a long class period,
7 must indeed be viewed as hugely successful. Many of these class members will have moved
8 multiple times over the length of the class, thus further inhibiting the claim rate.

9 **F. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE TO**
10 **SETTLEMENT CLASS MEMBERS**

11 The trial court has sound discretion to approve the plan of allocation of a settlement fund.
12 *In re Equity Funding Corp. Sec. Litig.* 603 F.2d 1353, 1362 (9th Cir. 1979). A plan of allocation
13 "need only have a reasonable, rational basis, particularly if recommended by experience and
14 competent counsel." *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555. This is a
15 "practical and flexible" standard withing the discretion of the court.

16 Here, the allocation of the "remainder" of the Maximum Settlement Amount is fair and
17 reasonable. The allocation is specifically based on the class members' number of qualifying
18 years worked and total compensation earned during the Class Period. Specifically, the
19 Settlement Agreement provides for the following payments to class members:

20 (c) Individual Settlement Award

21 (1) Each Settlement Class Member's "Individual Settlement Award" shall
22 equal the compensation earned by each Settlement Class Member during the Class
23 Period (determined by the individual's W-2 data), divided by the total
24 compensation paid to the Plaintiff Class during the Class Period (determined by
25 the Plaintiff Class' W-2 data), multiplied by the Potential Gross Individual
26 Settlement Proceeds. The Claims Administrator will pay out all claims submitted
27 by Settlement Class Members, out of a qualified settlement fund, on a confidential
28 basis and issue IRS tax forms.

1 *Example:* If the total compensation paid to the Plaintiff Class during the
2 Class Period were \$100,000 (as determined by W-2 data), a Settlement
3 Class Member who earned \$1,000 during the Class Period (as reported on
4 his of her W-2 form) would receive 1% (\$1,000 divided by \$100,000) of
5 the Potential Gross Individual Settlement Proceeds.

6 (See Class Action Settlement Agreement Pg. 11 ¶ 7(c)(1).)

7 Moreover, the settlement payments, and the structure of calculating awards, were
8 formulated by the parties counsel after lengthy negotiations, and the parties believed that the
9 settlement awards will fairly compensate the class based on the potential risks associated with the
10 litigation. In light of the evidence before the Court, the settlement amounts are fair and
11 reasonable and should be approved.

12 **G. NO OBJECTIONS HAVE BEEN RECEIVED**

13 The settlement has been well received by the class members. Not one phone caller or e-
14 mailer has voiced objection. Overall, the response has been overwhelmingly positive. Class
15 members were given until August 3, 2009 to object to all or any part of the proposed settlement.
16 Absolutely no objections have been received by Counsel for the parties, the Settlement
17 Administrator or by this Court. (See Declarations of Oseas and Saltzman). Specifically, no
18 objections were made as to: (1) the gross amount of the settlement; (2) the request for an
19 incentive award to the Plaintiff in the amount of \$50,000; (3) the request by class counsel for
20 payment of attorneys' fees equal to 1/3 of the gross settlement amount for a total of \$9,833,333;
21 or (4) the payment for attorneys' costs and expenses not to exceed \$300,000

22 **H. THE SETTLEMENT IS FAIR AND RESULTED FROM ARMS LENGTH**
23 **NEGOTIATIONS**

24 The fairness, reasonableness and adequacy of any class action settlement depends on "the
25 relative strength of the Plaintiffs' case; the risk, expense, complexity, and likely duration of
26 further litigation; the risk of maintaining class action status throughout the trial; the amount
27 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
28 experience and views of counsel;...and the reaction of class members to the proposed settlement."

1 *Glass v. UBS Financial Svcs., Inc.*, 2007 U.S. Dist. LEXIS 8476, at *9 (N.D. Cal. 2007)
2 (granting final approval). Indeed, fairness of a settlement is presumed where, as here:
3 (1) negotiations occurred at arm's length; (2) there was sufficient factual information available,
4 whether through formal or informal discovery (both were available here); (3) the proponents of
5 the settlement are experienced in similar litigation; and (4) only a small fraction of the class
6 objected (with absolutely no objections here). *Rodriguez v. West Publishing Corp.*, 2007 U.S.
7 Dist. LEXIS 74767, at *24 (C.D. Cal. 2007) (granting final approval). For this Settlement, each
8 of those benchmarks for approval is satisfied.

9 **1. Negotiations Occurred at Arms' Length**

10 As explained above, the proposed settlement was reached after arm's length negotiations
11 between the parties and after thorough consideration of the advantages and disadvantages of
12 continued litigation by each side. The settlement was negotiated by counsel fully apprised of the
13 issues in the litigation. Class Counsel, who have a great deal of experience in litigating and
14 resolving complex class action wage and hour actions, have carefully evaluated the merits of this
15 case and the proposed settlement. The proposed settlement eliminates the risk that the Class
16 could be denied any recovery at all.

17 Courts consistently find that "[t]he expense and possible duration of the litigation are
18 major factors to be considered in evaluating the reasonableness of [a] . . . settlement." *Milstein v.*
19 *Huck*, 600 F.Supp. 254, 267 (E.D.N.Y. 1984); *Bullock v. Administrator of Estate of Kircher*, 84
20 F.R.D. 1,10 (D.N.J. 1979). While Lowe's has agreed to settle the action, if this case were to
21 proceed, Lowe's would undoubtedly continue to assert a vigorous defense on liability. Therefore,
22 while Plaintiff believes the claims are meritorious and that if the case were to proceed against
23 Lowe's, the class would be able to establish liability, Plaintiff recognizes the uncertainties of trial
24 and the risks inherent in establishing liability in a complex case of this nature.

25 Expert discovery and trial preparation would be expensive and complex. While certainly
26 attainable, victory in such a complex trial is hardly assured. Thus, even if Plaintiff prevailed in
27 establishing liability, additional risks would remain in establishing the amount of damages
28 sustained by the Settlement Class. See *In re Veritas Software Corp. Sec. Litig.*, 2005 U.S. Dist.

1 LEXIS 30880 at *14-15 (N.D. Cal. Nov. 15, 2005) (challenges in proving damages and other
2 litigation risks supported approval of settlement).

3 By approving the Settlement, the Court can guarantee recovery for every single class
4 member who filed a claim without having the class face the risk of trial and a possible appeal. If
5 this case were to proceed to trial, the parties would have to expend hundreds, if not thousands, of
6 additional hours in attorney time, and spend much more in costs. Expenses incurred for a trial
7 would severely deplete any eventual recovery. Further, post-trial motions and appeals could
8 force class members to wait many more years for any recovery, further reducing its value.
9 Consequently, resolution of this case before trial will benefit the Settlement Class.

10 Consistent with the foregoing, the Court has already determined that it would be grossly
11 inefficient for such a large class of current and former employees to bring individual actions to
12 recover from Lowe's for its alleged federal and state labor law violations. (*See generally*
13 Preliminary Approval Order.) Moreover, the potential recovery to each individual class member
14 is likely not high enough to provide them with the incentive to sue individually. By granting
15 final approval of the settlement, the Court can eliminate all risks and provide participating class
16 members with a certain recovery.

17 The proposed settlement of up to \$29,500,000 represents an excellent resolution. If the
18 matter were to proceed to trial, Class Counsel know from experience that the apparent strength of
19 a Plaintiff's case is no guarantee against a defense verdict. Moreover, the settlement amount
20 represents a substantial global recovery for a class essentially seeking varying amounts of
21 minutes per day of "off the clock" work.

22 2. There was Ample Factual Information Available

23 The extent of evidentiary review completed and the stage of the proceedings bear on
24 whether settlement should be approved. Courts look to whether investigation of the facts and
25 evidence is sufficient to allow counsel and the court to act intelligently. *In re Warner*
26 *Communications Sec. Litig.*, 618 F.Supp. 735, 741 (S.D.N.Y. 1985) *aff'd* (2nd Cir. 1986).

27 In this case, extensive documents have been produced and approximately 75 depositions
28 conducted. The information produced by this discovery was not only extensive, but clearly

1 allowed both parties to assess their relative positions and come to the conclusion, based on the
2 analysis of the information, that settlement at this stage of the litigation is proper.

3 By the time the settlement was reached, the action had proceeded to the point where both
4 Plaintiffs and Lowe's had "a clear view of the strengths and weaknesses of their cases." *In re*
5 *Warner Communications Sec. Litig.*, 618 F.Supp. At 745. At the time the parties mediated the
6 action, Plaintiff had been litigating the action for over seven years and had conducted extensive
7 informal investigation and formal discovery. Accordingly, the stage of the proceedings, and the
8 amount of the discovery completed, strongly favor approval of the Settlement. See *Chatelain v.*
9 *Prudential-Bache Sec.*, 805 F.Supp. 209, 213-14 (S.D.N.Y. 1992).

10 3. The Settlement Has No Obvious Deficiencies

11 The Settlement provides no preferential treatment for Plaintiff or other Class Members.
12 Plaintiff will receive a settlement share calculated in the same manner as the distributions to all
13 other Class Members. The enhancement award which the Class Representative seeks will be
14 subject to Court approval, and he contends it adequately compensates him for his time and effort
15 in pursuing this action, and the risks to which he exposed himself. Lowe's does not contest this
16 award. Class Counsel will apply for an award of attorneys' fees not to exceed thirty three and one
17 third percent (33 1/3%) of the Maximum Settlement Amount, and any award of fees and costs
18 and expenses is subject to Court approval. Again, Lowe's does not contest this award. As noted
19 previously, by separate motion, Plaintiff will bring an unopposed motion for (1) incentive award
20 to the class representative, and (2) an award of attorneys' fees and costs.

21 I. THE EXPERIENCE OF CLASS COUNSEL

22 Filed contemporaneously herewith is Plaintiff's Memorandum of Points & Authorities in
23 Support of Motion for Award of Attorneys' Fees, Costs and an Incentive Award for Plaintiff and
24 supporting Declarations. In those Declarations, the substantial experience of Class Counsel in
25 class actions, and particularly in wage and hour class actions, is detailed.

26 J. COSTS

27 At the time of Preliminary Approval, Class Counsel estimated their costs would not
28 exceed \$300,000. The actual expenses incurred total \$238,008.15. (See Saltzman, Bradley and

1 Parris declarations). These were all necessary costs. Class counsel seeks, as part of this Court's
2 Final Order, recovery of these costs. Additionally, the R. Rex Parris Law Firm posted the
3 undertaking in the amount of \$50,000 on September 21, 2005 which is not included in the total
4 costs of \$238,008.15. Counsel will ask the Court to order release of the undertaking at the
5 hearing on the Motion for Final Approval.

6 **K. SETTLEMENT ADMINISTRATION EXPENSES**

7 As part of the Settlement Agreement, the cost of claims administration will be paid from
8 the settlement fund. These costs include the fee for the Third Party Claims Administrator. The
9 sum of all administrative costs to date is \$210,428.14. This amount includes printing costs and
10 postage for mailing the Notice Package, maintaining the phone line and website, receiving and
11 processing all claim submissions and all other work performed by Epiq in connection with the
12 Settlement. The remaining costs are estimated at \$149,100. To date, Epiq has not received
13 payment for any administrative work. (Declaration of Robert Oseas ¶18).

14 Class Counsel seek an order from the Court permitting the payment of \$359,528.14. If
15 any unanticipated and unusual fees are incurred, Class Counsel will report the same to the Court
16 for approval.

17 **L. FUTURE ACTIONS**

18 Class Counsel will continue to work with the Class Members, the Claims Administrator
19 and with Defense Counsel to complete the claims process and to see that all valid claims are paid
20 pursuant to the Settlement Agreement. It is anticipated that this process will be completed in the
21 first quarter of 2010. Class Counsel will report to the Court upon completion of the process.

22 **II. CONCLUSION**

23 For all the foregoing reasons and taking into consideration the interests of the Class in
24 timely relief, and the expense and uncertainty of continued litigation, the proposed Settlement
25 should be granted final approval by the Court. The parties hereto jointly request that the Court:

26 (a) grant final approval of the proposed Settlement between Plaintiff Willie Lopez, on
27 his own behalf and on behalf of the class, and Defendant Lowe's H.I.W., Inc.;

28

- 1 (b) grant final approval of the payment to Epiq Systems, Inc. from the Maximum
2 Settlement Amount for the costs of administration of the settlement;
- 3 (c) grant final approval of the attorneys fees, costs, and incentive payments requested
4 in the contemporaneously filed motion;
- 5 (d) enter final judgment in this action in the form of the Order and Final Judgment
6 submitted herewith; and
- 7 (e) retain continuing jurisdiction over the implementation, interpretation,
8 administration, and consummation of the settlement.
- 9

10 DATED: September 14, 2009

**MARLIN & SALTZMAN
R. REX PARRIS LAW FIRM**

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13 By: 

Marcus J. Bradley, Esq.
Attorney for Plaintiff and Plaintiff Class

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1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen and not a party to the within action; my business address is 29229 Canwood Street,
Suite 208, Agoura Hills, CA, 91301.

5 On September 14, 2009, I served the foregoing document entitled **AMENDED NOTICE**
6 **OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION**
7 **SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
8 **THEREOF** on all interested parties in this action as follows:

9 **SEE ATTACHED SERVICE LIST**

10 ☐ (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at Agoura Hills,
11 California with postage thereon fully prepaid.

12 I am "readily familiar" with the firm's practice of collection and processing
13 correspondence for mailing. It is deposited with the U.S. Postal Service on that same day
14 in the ordinary course of business. I am aware that on motion of party served, service is
15 presumed invalid if postal cancellation date or postage meter date is more than one day
16 after date of deposit for mailing in affidavit.

17 ☒ (VIA FEDERAL EXPRESS) I caused to have served such document(s) by depositing
18 them in the drop box at Agoura Hills, California, for priority overnight next day delivery.

19 ☐ (VIA FACSIMILE) I caused such document to be faxed to the persons identified with
20 fax numbers on the attached Mailing List.

21 ☐ (VIA PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the
22 addressee.

23 ☒ (VIA E-MAIL) I caused to have such documents sent by electronic service [Fed. Rule
24 Civ. Proc. Rule 5(b)(2)(a)] by electronically mailing a true and correct copy through
25 Marlin & Saltzman's electronic mail system to the e-mail address(s) set forth below, or as
26 stated on the attached service list per agreement in accordance with Federal Rules of Civil
27 Procedure rule 5(b).

28 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

Executed September 14, 2009, at Agoura Hills, California.

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26 Sandy Laranjo
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SERVICE LIST

LASC Case No. BC260702

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Co-Counsel for Plaintiffs