

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

CYNTHIA AUGUSTYNIAK, DENISE
GIAMBRONE & JULIE GLOVER, on behalf
of themselves and all others similarly situated,

Plaintiff

v.

Case No.: 1:14-CV-00488-RJA

LOWE'S HOME CENTER, LLC.;
LOWE'S HOME CENTERS, INC.;
LOWE'S COMPANIES, INC.; and
LOWE'S HIW, INC.,

Defendants.

PLAINTIFFS' AMENDED CLASS & COLLECTIVE ACTION COMPLAINT

Plaintiffs, CYNTHIA AUGUSTYNIAK, DENISE GIAMBRONE & JULIE GLOVER on behalf of themselves and all others similarly situated, respectfully alleges upon knowledge as to themselves and upon information and belief as to all other matters, the following:

SUMMARY OF THE ALLEGATIONS

Defendants have willfully chosen to uniformly misclassify all of their employees titled Human Resources Managers ("HRM's") as exempt. This was done so Defendants would not have to pay their employees overtime. This decision was made as the highest corporate level, was wrong, and the actors knew it. The policy saves hundreds of millions of dollars. In fact, years of litigation (even if unsuccessful), is more cost effective then complying with the law due to its rolling statute of limitations. Said simply, this was a business decision to purposefully evade the provisions of New York Labor Law, applicable regulations, and the Fair Labor Standards Act.

The Human Resource Manager's here don't act like their title implies. Indeed, they lack discretion to make meaningful decisions, they do not promulgate corporate policy, and they do not supervise employees. Instead, they perform menial laborious nonexempt tasks, including processing payroll, new hire orientation, benefits, and operating cash registers, cleaning bathrooms, greeting customers, and sweeping the stores. They are mandated to work overtime. As a result, the class has been grossly underpaid and overworked and Defendants have been unjustly enriched by virtue of their systematic failure to compensate Plaintiffs and the Class in accordance with the Fair Labor Standards Act and New York law. On behalf of themselves and the Class, Plaintiffs seek injunctive relief requiring Defendants to comply with the law, compensatory damages in the amounts Plaintiffs, and the Class members, should have received had Defendants paid them overtime compensation in accordance with the law, calculated their wages properly under the law, pre- and post-judgment interest, and attorneys' fees and costs.

INTRODUCTION

Plaintiffs, CYNTHIA AUGUSTYNIAK¹ and DENISE GIAMBRONE², individually, and on behalf of all others similarly situated, sues Defendants, LOWE'S HOME CENTERS, INC., LOWE'S HOME CENTER'S LLC, LOWE'S COMPANIES, INC., and LOWE'S HIW, INC.³, pursuant to provisions of the New York Labor law and applicable regulations; and Plaintiff, JULIE GLOVER⁴, individually, and on behalf of all others similarly situated, sues Defendants pursuant to the Fair Labor Standards Act ("FLSA") 29 U.S.C. 216(b), and states as follows:

¹ hereinafter referred to as "Ms. Augustyniak" or "Augustyniak"

² hereinafter referred to as "Plaintiffs," Ms. Giambrone" or "Giambrone"

³ hereinafter collectively referred to as "Defendants" or "Lowe's" or the "Company"

⁴ hereinafter referred to as "Plaintiffs," Ms. Glover" or "Glover"

1. Plaintiffs bring this action on behalf of themselves and a class of similarly situated current and former employees, to seek redress for systematic and class-wide failure to pay overtime pay and for unjust enrichment.

2. Pursuant to plan and policy, the Plaintiffs and similarly situated current and former employees have been given the title of “Human Resources Manager” and unlawfully misclassified by Defendants as exempt employees to avoid compensating them for time worked in excess of forty (40) hours per week.

3. Defendants failed to pay Plaintiffs and similarly situated employees in accordance with the FLSA and provisions of New York Labor law, applicable regulations and common law principles of unjust enrichment, including, but not limited to, their failure to pay Plaintiffs and the Class for all wages due for overtime work at not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

4. In this pleading, the term “Human Resources Manager” means any employee with the title of Human Resources Manager or any other title or position where employees perform substantially the same work as employees with that title (discovery may reveal additional job titles and employees that should be included).

5. In this pleading, “Defendants” means the named Defendants, LOWE’S HOME CENTERS, INC., LOWE’S HOME CNETERS, LLC, LOWE’S COMPANIES, INC., and LOWE’S HIW, INC., and any other corporation, organization or entity responsible for the employment practices complained of herein (discovery may reveal additional Defendants that should be included).

6. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiffs bear the burden of pleading, proof, or persuasion. Plaintiffs reserve all rights to plead in the alternative.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this pursuant to *28 U.S.C. § 1331*, because this action involves a Federal Statute, *29 U.S.C. § 216(b)*.

8. This Court has personal jurisdiction over this action because Lowe's operates substantial business in Erie County and some of the damages at issue occurred in Erie County, New York.

9. Venue in this Court is proper pursuant to *29 U.S.C. § 216(b)*.

10. Plaintiffs bring causes of action based on and arising under New York law and the FLSA. The claims of Plaintiffs and the Class are claims for violations of New York law that occurred exclusively in New York and all, or substantially all, Class members are residents of New York. These claims arise from Defendants' systematic wage abuse against their "Human Resources Managers" in New York.

FACTUAL BACKGROUND

11. Lowe's operates more than 1,750 home improvement retail stores nationwide, including sixty-seven (67) stores in New York.

12. Upon information and belief, all stores are uniform in management, and the stores are mirror images of each other.

13. Upon information and belief, all or substantially all stores operate with the same training models for employees, career paths, job titles, hierarchy, and employee policies and procedures.

14. Upon information and belief, all stores are supervised by territory or regional officers who represent the corporate office.

15. The position of Human Resources Manager is not a position that falls within

any exemptions within the Fair Labor Standards Act (“FLSA”), § 213.

16. Under the regulations implementing the New York Labor Law, non-exempt employees must be paid at a rate of “not less than one and one-half times the regular rate at which he is employed” for any hours worked in excess of forty hours in a given week. 12 NYCRR § 142-2.2 (adopting provisions of FLSA and implementing New York Labor Law).

17. The Human Resources Manager job description is the same for all Lowe’s stores in New York.

18. No college education is required for the Human Resources Manager position.

19. All job postings are handled by the corporation and listed on the company’s website. The job descriptions for the Human Resources Manager position are identical for all states, including New York State.

20. Pursuant to 12 NYCRR § 142-2.2, Lowe’s, as the employer of Ms. Augustyniak, Ms. Giambrone, Ms. Glover and other similarly situated employees, was and is required to pay one and one-half times each employee’s hourly rate of pay for all hours worked in excess of forty (40) hours per week.

21. The Defendants, as a matter of policy and practice, willfully and intentionally failed to pay Plaintiffs and the Class members one and one-half times their regular rate of pay for any hours worked over forty (40) in a week in violation of 12 NYCRR § 142-2.2.

22. Defendants have willfully misclassified Human Resources Managers as salaried, exempt employees for the purpose of avoiding the overtime pay provision of the New York Codes, Rules, and Regulations. Defendants have done so uniformly throughout their stores in New York by not compensating Human Resources Managers with overtime wages. The job duties of the Human Resources Manager position are uniform throughout all Lowe’s

stores in New York with regard to the intentional and willful misclassification of this class of employees who don't have subordinates to delegate to.

23. Defendants have intentionally and repeatedly engaged in the practice of misclassifying non-exempt Human Resources Managers as salaried exempt employees for the purpose of minimizing payroll and increasing profitability.

24. Currently pending before the United States District Court, Middle District of Florida is a collective action case, brought pursuant to the Fair Labor Standards Act ("FLSA") and styled as *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 Companies, Inc.; and Lowe's HIW Inc.*, Case No. 8:12-cv-1848-T-33TBM, which, like this class action, has also been brought on behalf of all Human Resources Managers.

25. In *Lytle*, the United States District Court, Middle District of Florida, has conditionally certified that case on behalf of all Human Resources Managers across all Lowe's stores throughout the United States and found that the Human Resources Managers are similarly situated. *See Lytle* Order granting conditional certification attached as **Exhibit "A."**

26. Likewise, the Defendants have admitted in *Lytle*, that the job descriptions for all Store Human Resources Managers are the same for all Lowe's stores in the United States of America. *See* Lowe's' Responses to First Request for Admissions in *Lytle* attached as **Exhibit "B."**

27. Lowe's' own documents and studies related to the HR position conclude that the job duties are clerical and administrative as the majority of time spent each week by HR Managers are on non-exempt, clerical and administrative type duties such as filing, payroll,

screening applicants and job postings, communication with employees, new hire orientation, and editing overtime schedules. The HR Managers do not decide the number of employees to staff.

MS. AUGUSTYNIAK

28. Ms. Augustyniak worked for Lowe's from October of 2004 until April of 2010 as a Human Resources Manager in Orchard Park, New York.

29. Ms. Augustyniak falls outside of the two and three year statute of limitations provided for under the FLSA and cannot opt into the collective action case, and claim her unpaid wages, which is currently pending on behalf of the Human Resources Managers in *Lytle*.

30. Ms. Augustyniak will fairly and adequately protect the interests of the Class and has retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the Class.

31. Ms. Augustyniak averaged between sixty (60) to sixty-five (65) hours of work per week.

32. Ms. Augustyniak worked these hours throughout her employment with Lowe's.

33. While employed by Defendants, Ms. Augustyniak regularly worked more than forty (40) hours in a week but was not paid overtime compensation.

MS. GIAMBRONE

34. Ms. Giambrone worked for Lowe's from August 31, 2009 until July 19, 2011 as a Human Resources Manager in Brockport, New York.

35. Ms. Giambrone will fairly and adequately protect the interests of the Class

and has retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the Class.

36. Ms. Giambrone averaged sixty (60) hours of work per week.

37. Ms. Giambrone worked these hours throughout her employment with Lowe's.

38. While employed by Defendants, Ms. Giambrone regularly worked more than forty (40) hours in a week but was not paid overtime compensation.

MS. GLOVER

39. Ms. Glover is a current Human Resources Manager working for Lowe's since October 4, 2010 in Mansfield, Pennsylvania.

40. Ms. Glover will fairly and adequately protect the interests of the Collective Class and has retained counsel experienced in pursuing complex class and collective action litigation who will adequately and vigorously represent the interests of the Class.

41. Ms. Glover averaged sixty (60) hours of work per week.

42. Ms. Glover worked these hours throughout her employment with Lowe's.

43. While employed by Defendants, Ms. Glover regularly worked more than forty (40) hours in a week but was not paid overtime compensation.

PLAINTIFFS

44. Plaintiffs' duties as a Human Resources Manager's included mainly clerical work such as processing paperwork related to benefits, and payroll and other new hire documentation. Plaintiffs also assisted the Store Manager with the hiring process but did not have to authority to make any hiring decisions.

45. The extent of Plaintiffs' participation in the interview process consisted of reading scripted questions and attributing a score to each applicant by following a pre-made scoring chart created by Lowe's. Plaintiffs then provided the scores to a department manager and/or store manager who would then conduct final interviews and select a candidate for hire.

46. Plaintiffs' participation in the interview process was automated and they could not give recommendations on who to hire. Their role as a Human Resources Manager's was limited to being an initial screener of job applicants by following an automated procedure dictated by Lowe's.

47. Plaintiffs did not have the ability to supervise, hire, or fire other employees. Only the store manager, who was in a superior position to Plaintiffs, could supervise, hire and fire employees.

48. Plaintiffs' primary duties did not involve the exercise of discretion and independent judgment. They had no authority to make independent decisions on matters that affected the business as a whole or any significant part of the business.

49. Plaintiffs did not supervise any employees and did not have any subordinate employees to whom they could delegate work to.

50. Plaintiffs did not have the authority to promote employees, determine their pay rates or benefits or give raises. Plaintiffs were unable to make personnel decisions.

51. Plaintiffs did not have the authority to decide whether or not an employee should be disciplined for an infraction or what the discipline would be. Disciplinary decisions were made by Plaintiffs' supervisors and set by Defendants' company policies and guidelines.

52. Plaintiffs could only review the company disciplinary guide and advise management of the appropriate disciplinary action applicable to the alleged misconduct. Plaintiffs, however, have no discretion to determine if disciplinary action should be handed out or the type of disciplinary action.

53. Plaintiffs are not in reality a manager as that term is known within the meaning of the New York Labor Law and the FLSA. The primary job duty of Plaintiffs was as a low level Human Resources employee, processing documents, screening job applicants, handling benefit papers, record custodian, following instructions of corporate procedures, and processing payroll.

THE DEFENDANTS

54. Defendant, LOWE'S HOME CENTERS, INC., is a Foreign For-Profit Corporation, with its principal place of business at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. Defendant, LOWE'S HOME CENTERS, Inc. may be served through its registered agent for service of process, Corporation Service Company, at 80 State Street, Albany, New York 12207. Upon information and belief, this Defendant controls many of the U.S. stores of Lowe's.

55. Defendant, LOWE'S HOME CENTERS, LLC, is a Foreign Limited Liability Company with its principal place of business 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. Defendant, LOWE'S HOME CENTERS, LLC, has registered with the New York State Department of State and may be served through its registered agent for service of process, Corporation Service Company, at 80 State Street, Albany, New York, 12207-2543. Defendant LOWE'S HOME CENTERS, LLC is registered as a resident of Onondaga County, and upon information and belief, this

Defendant – either in conjunction with or in the place of Defendant LOWE’S HOME CENTERS, INC., controls many of the U.S. stores of Lowe’s.

56. Defendant, LOWE’S HIW, INC., is a subsidiary corporation of LOWE’S COMPANIES, INC. Defendant, LOWE’S HIW, INC. is a Washington corporation with its principal place of business located at 101 Andover Park East, Tukwila, Washington 98188. Upon information and belief, this Defendant controls a number of the Lowe’s stores.

57. Defendant, LOWE’S COMPANIES INC., is a Fortune 100 company incorporated in North Carolina. It is publicly traded on the New York Stock Exchange. It had sales of \$50.5 billion and net earnings of \$2.0 billion in 2012. Its principal office is located at 1000 Lowe’s Blvd., Mooresville, NC 28117-8520. Its registered agent for service of process is the Corporation Service Company, 327 Hillsborough Street, Raleigh, NC 27603-1725. Upon information and belief, LOWE’S COMPANIES, INC., owns the other Lowe’s Defendant companies.

58. Upon information and belief, in November of 2013, Defendant LOWE’S HOME CENTERS, INC., converted to the business entity LOWE’S HOME CENTERS, LLC.

59. At all times relevant to this action, Plaintiffs and the Class were “employees” covered by the New York Labor Law, and Defendants were “employers” of Plaintiffs and the Class of “Human Resources Managers” she seeks to represent, as those terms are defined by New York Labor Law §§ 651(5) and (6), 190(2) and (3) and applicable regulations, 12 NYCRR § 142-2.14.

CLASS ACTION ALLEGATIONS UNDER CPLR ARTICLE 9 NEW YORK LAW

60. Plaintiffs, Cynthia Augustyniak and Denise Giambrone bring this action individually and as a class action under CPLR Article 9, as representative of a class (the

“Class”) consisting of themselves and:

All **Human Resources Managers** or other Human Resources store employees with other titles, who are or were employed with Lowe’s in New York, within the past six years preceding this lawsuit (i.e. April 4, 2008) to the day of trial, who have worked in excess of forty (40) hours per week and were not paid overtime wages.

61. The Class is so numerous that joinder of all Class members is impracticable. Although the precise number of such persons is unknown, and the facts are presently within the sole knowledge of Defendants, there are hundreds of Human Resources Managers employed by Defendants in New York as of the date this Complaint was filed. The Class also includes former employees who were employed by Defendants since April 4, 2008. Because there are approximately sixty-seven (67) Lowe’s stores in New York, Plaintiffs anticipates there could be upwards of two-hundred-and-fifty (250) current and former Human Resources Managers who have worked at Lowe’s during the past six (6) years. Therefore, the Class is sufficiently numerous to warrant certification.

62. The claims of all Class members present common questions of law or fact, which predominate over any questions affecting only individual Class members, including:

- a) Whether Defendants violated the New York Labor Law by failing to pay Plaintiffs and the Class overtime wages;
- b) Whether Defendants were unjustly enriched by their wage policies;
- c) Whether Defendants should be enjoined from continuing the alleged wrongful practices in violation of New York Labor Law and applicable regulations; and
- d) What is the proper measure of damages for the type of injury and losses suffered by Plaintiffs and the Class.

63. Plaintiffs, Cynthia Augustyniak and Denise Giambrone’s claims are typical

of those of the Class, because they are, or were, employed by Defendants as Human Resources Managers in New York who sustained damages, including non-payment of overtime wages, as a result of Defendants' common compensation policies and practices. The defenses that likely will be asserted by Defendants against Plaintiffs, Cynthia Augustyniak and Denise Giambrone, are typical of the defenses that Defendants will assert against the Class members.

64. Plaintiffs, Cynthia Augustyniak and Denise Giambrone, will fairly and adequately protect the interests of the Class and have retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the Class.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy alleged herein for at least the following reasons:

- A. This action will cause an orderly and expeditious administration of the Class' claims; economies of time, effort and expense will be fostered; and uniformity of decision will be ensured;
- B. This action presents no difficulties impeding its management by the Court as a class action; and no superior alternative exists for the fair and efficient adjudication of this controversy;
- C. Class members currently employed by Defendants would be reluctant to file individual claims for fear of retaliation or blacklisting even after the end of their employment;
- D. The Class is readily identifiable from records that Defendants are legally required to maintain; and

E. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

66. Defendants have acted, or failed to act, on grounds generally applicable to the Class.

67. Without a class action, Defendants will likely retain the benefit of their wrongdoing and will continue a course of action which will result in further damages to Plaintiffs and the members of the Class.

68. Currently pending before the United States District Court, Middle District of Florida is a collective action case, brought pursuant to the Fair Labor Standards Act (“FLSA”) and styled as *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 Companies, Inc.; and Lowe’s HIW Inc.*, Case No. 8:12-cv-1848-T-33TBM, which, like this class action, has also been brought on behalf of all Human Resources Managers.

69. In *Lytle*, the United States District Court, Middle District of Florida, has conditionally certified that case on behalf of all Human Resources Managers across all Lowe’s stores throughout the United States and found that the Human Resources Managers are similarly situated. *See Lytle* Order granting conditional certification attached as **Exhibit “A.”**

70. Likewise, the Defendants have admitted in *Lytle*, that the job descriptions for all Store Human Resources Managers are the same for all Lowe’s stores in the United States of America. *See* Lowe’s Responses to First Request for Admissions in

Lytle attached as **Exhibit “B.”**

71. Lowe’s creates and assigns a uniform corporate work schedule applicable to all Human Resource Managers to ensure they all work a similar schedule and this schedule is a mandatory overtime schedule.

72. All Human Resource Managers are classified as exempt employees from overtime wages.

73. The day to day job duties of Human Resource Managers is expected and required to be performed by Lowe’s in a uniform and similar manner.

74. The interview, job screening and hiring process for all Human Resource Managers is required and expected by Lowe’s to be performed in a uniform and at least similar manner.

75. All Human Resource Managers perform their job duties in a similar and in some instances identical manner as required by Lowe’s.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

76. Plaintiff, Julie Glover, brings this FLSA claim on behalf of all Human Resources Managers who were not part of the *Lytle* case and who work or who have worked for Lowe’s at any time in the preceding three years during the Class Period.

77. Lowe’s has willfully misclassified Human Resources Managers as salaried, exempt employees for the purpose of avoiding the overtime pay provision of the FLSA. Lowe’s has done so uniformly throughout its stores by not compensating Human Resources Managers with overtime wages. The job duties of the Human Resources Manager position are uniform throughout all Lowe’s stores with regard to the intentional and willful

misclassification of this class of employees.

78. Lowe's has intentionally and repeatedly engaged in the practice of misclassifying non-exempt Human Resources Managers as salaried exempt employees under the FLSA for the purpose of minimizing payroll and increasing profitability.

79. The primary job duty and function of the Human Resources Manager is not management of the store or enterprise.

80. Only the Store Manager exercises discretion and judgment and has the authority to make independent decisions on matters that affect the business as a whole.

81. Lowe's is liable under the FLSA for failing to properly compensate Human Resources Managers who worked over forty (40) hours per week, and as such, notice should be sent to past and current employees of Lowe's. These similarly situated employees would benefit from the issuance of a court supervised notice regarding the present lawsuit and the opportunity to join in the present lawsuit pursuant to FLSA §216(b). These similarly situated employees are known to Lowe's, are readily identifiable, and can be located only through Lowe's records.

82. Lowe's required Ms. Glover to work a mandatory forty-eight (48) hours per week. All Lowe's HRMs have a corporately set mandatory schedule of a minimum of forty-eight (48) hours weekly.

83. Upon information and belief, this policy of mandatory overtime is a corporate decision and is applied uniformly to all other similarly situated managers.

84. Lowe's has settled claims with other "Loss Prevention Managers" that it employed for misclassifying those employees as exempt and knew that the Human

Resources Managers had the same limitations on discretion and lack of supervision over other employees so that it has willfully and intentionally misclassified the Human Resources Managers as exempt in order to avoid paying overtime compensation.

85. This collective action arises from an ongoing wrongful scheme by Lowe's to willfully misclassify Human Resources Managers as exempt from the overtime benefits due under the FLSA.

86. Ms. Glover brings this suit on behalf of a collective class of similarly situated persons composed of:

All *Human Resources Managers* or other Human Resources store employees with other titles, who are now or were employed with Lowe's, within the past three years preceding this lawsuit to the day of trial, who were not a part of the *Lyle* suit and who elect to opt-in to this action pursuant to FLSA 29 U.S.C. Section §216(b).

87. Ms. Glover believes that she can adequately represent the Collective Class and consents to doing so.

88. Ms. Glover is a proper Collective Class representative as she was employed by Defendants as a Human Resources Manager.

89. Ms. Glover alleges for herself, and on behalf of the class who elect to opt-in to this action that she is entitled to unpaid wages from Defendants for overtime work for which she did not receive overtime premium pay, as required by law.

90. Lowe's creates and assigns a uniform corporate work schedule applicable to all Human Resource Managers to ensure they all work a similar schedule and this schedule is a mandatory overtime schedule.

91. All Human Resource Managers are classified as exempt employees from

overtime wages.

92. The day to day job duties of Human Resource Managers is expected and required to be performed by Lowe's in a uniform and similar manner.

93. The interview, job screening and hiring process for all Human Resource Managers is required and expected by Lowe's to be performed in a uniform and at least similar manner.

94. All Human Resource Managers perform their job duties in a similar and in some instances identical manner as required by Lowe's.

COUNT I

Class Action for Unpaid Overtime Wages in Violation of 12 NYCRR § 142-2.2

95. Plaintiffs, Cynthia Augustyniak and Denise Giambrone, repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

96. Throughout the Class Period, Plaintiffs, Cynthia Augustyniak and Denise Giambrone, and members of the Class were Defendants' "employees" within the meaning of the New York Labor Law §§ 190(2) and (3), and 651(5) and (6).

97. Throughout the Class Period, Defendants failed to pay Plaintiffs, Cynthia Augustyniak and Denise Giambrone, and the Class overtime wages of not less than one and one-half times their regular rate of pay for each hour worked in excess of forty (40) hours in a workweek in violation of 12 NYCRR § 142-2.2.

98. Defendants have willfully and intentionally engaged in a statewide pattern and practice of violating the provisions of the New York labor laws, by misclassifying Human Resources Managers as exempt and improperly failing and/or refusing to pay Ms. Augustyniak and Ms. Giambrone and the Plaintiffs Class, comprised of

all current and former similarly situated employees who work or have worked over forty (40) hours per week, overtime compensation pursuant to 12 NYCRR § 142-2.2.

99. Lowe's has been operating its business since 1946 and knew, or should have known, that job title alone (i.e. Human Resources Manager) is not controlling of the overtime exemption status of employment under 12 NYCRR § 142-2.2 and the FLSA.

100. Lowe's knowingly and willfully misclassified Ms. Augustyniak and Ms. Giambrone and other employees similarly situated, comprised of the Plaintiffs Class, as exempt for the purposes of decreasing costs and maximizing profitability.

101. The widespread nature of Lowe's failure to pay overtime, in violation of 12 NYCRR § 142-2.2, is demonstrative of Lowe's willful plan and scheme to evade and avoid paying overtime to all of their Human Resources Managers.

102. As a result of Lowe's violations of 12 NYCRR § 142-2.2, Ms. Augustyniak and Ms. Giambrone and the Plaintiffs Class, comprised of all other employees similarly situated, have suffered damages by Lowe's failure to pay overtime compensation in accordance with 12 NYCRR § 142-2.2.

103. In light of Defendants' longstanding and ongoing violations of New York Labor Law and applicable regulations, Defendants' failure to pay current employees their wages due has caused and is causing irreparable injury to those Class members who are currently employed by Defendants, and unless enjoined, will cause further irreparable injury, leaving those Class members with no adequate remedy at law.

104. Due to Defendants' violations of the New York Labor Law, Plaintiffs, Cynthia Augustyniak and Denise Giambrone, and members of the Class are entitled to recover from

Defendants all of the unpaid overtime wages of not less than one and one-half times their regular rate of pay for each hour worked in excess of forty (40) hours in a workweek, reasonable attorney's fees, costs, pre-judgment and post-judgment interest, and other compensatory and equitable relief pursuant to New York Labor Law Article 6 § 190, et seq., and Article 19 § 650, *et seq.*

WHEREFORE, Ms. Augustyniak and Ms. Giambrone, on behalf of themselves and all members of the Class, respectfully pray that this Court enter judgment:

- A. Certifying the Class described herein pursuant to CPLR Article 9;
- B. Entering judgment against Defendants, jointly and severally, in the amount of the Plaintiffs' and the Class members' individual unpaid wages for the preceding six (6) years minus any of the Plaintiffs', and Class members', recovery of unpaid wages in *Lytle*, statutory damages and actual and compensatory damages, and pre- and post-judgment interest as allowed by law;
- C. Awarding Plaintiffs and the Class members attorney's fees and costs incurred in this litigation;
- D. Issuing a declaratory judgment that the practices complained of herein are unlawful under New York Labor Law;
- E. Enjoining Defendants to cease the practices found illegal or in violation of the rights of the Class of Human Resources Managers; and
- F. Granting Plaintiffs and the Class such further relief as this Court deems just and proper.

COUNT II

Unjust Enrichment: Defendants' Failure to Pay Overtime Wages

105. Plaintiffs repeat and reallege each and every allegation contained in the

preceding paragraphs as if fully set forth herein.

106. Defendants have failed to pay Plaintiffs and the Class members overtime wages for the hours they each worked for Defendants. 12 NYCRR § 142-2.2 requires that Lowe's, subject to the exemptions of section 7 and 13 of the FLSA, pay their employees one and one-half times each employee's hourly rate of pay for all hours worked in excess of forty (40) hours per week.

107. Due to Defendants' violations of the New York Labor Law, Plaintiffs and members of the Class are entitled to recover from Defendants their unpaid wages, reasonable attorney's fees, costs and pre-judgment and post-judgment interest.

108. In light of Defendants' longstanding and ongoing violations of New York Labor Law and applicable regulations, Plaintiffs and the Class also seek injunctive relief precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the New York Labor Law.

COUNT III

Collective Action for Unpaid Overtime Wages in Violation of 29 U.S.C. §207

109. Plaintiff, Julie Glover, repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

110. Lowe's has willfully and intentionally engaged in a pattern and practice of violating the provisions of the FLSA, by misclassifying Human Resources Managers as exempt under the FLSA overtime wage provision, thereby improperly failing and/or refusing to pay Ms. Glover and the Plaintiff Class, comprised of all current and former similarly situated employees who work or have worked over forty (40) hours per week, overtime compensation pursuant to FLSA §207.

111. Lowe's has been operating its business since 1946, and is well aware of the FLSA, its provisions and exemptions, and knew or should have known that job title alone (i.e. Human Resources Manager) is not controlling of the overtime exemption status of employment under the FLSA.

112. Lowe's knowingly and willfully misclassified Ms. Glover and other employees similarly situated, comprised of the Plaintiff Class, as exempt for the purposes of decreasing costs and maximizing profitability.

113. Lowe's knowingly and willfully failed to track the hours worked by most, if not all of the Human Resources Managers, including Ms. Glover and other employees similarly situated, comprised of the Plaintiff Class.

114. By failing to record, report, and/or preserve records of hours worked by the Named Plaintiff, Opt-Ins and purported Classes, the Defendants have failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA 29 USC 201 *et seq.*, including 29 USC Sec. 211(c) and 215(a).

115. Lowe's knew or should have known that the act of paying Ms. Glover and other employees similarly situated, comprised of the Plaintiff Class, on a salary basis, without more, is insufficient to evade the wage and hour requirements of the FLSA.

116. The widespread nature of Lowe's failure to pay overtime under the FLSA is demonstrative of Lowe's willful plan and scheme to evade and avoid paying overtime to all of their Human Resources Managers.

117. As a result of Lowe's violations of the FLSA, Ms. Glover and the Plaintiff Class, comprised of all other employees similarly situated, have suffered damages by

Lowe's failure to pay overtime compensation in accordance with FLSA §207.

118. Lowe's has not made a good faith effort to comply with the FLSA, and the overtime compensation requirements with respect to Ms. Glover and the Plaintiff Class, comprised of all other employees similarly situated.

119. Due to Lowe's willful violation of the FLSA, a three-year statute of limitations applies to the FLSA violations pursuant to *29 U.S.C. §255(a)*.

120. As a result of Lowe's unlawful acts, Ms. Glover and the Plaintiff Class, comprised of all other similarly situated employees, have been deprived of overtime compensation in amounts to be determined at trial; and are entitled to recovery of such amounts, liquidated damages in amount equal to the overtime wages due, prejudgment interest, attorneys' fees, costs and other compensation pursuant to *29 U.S.C. §216(b)*, as well as injunctive relief pursuant to *29 U.S.C. §217*.

WHEREFORE, Ms. Glover individually, and on behalf of all other past and present Human Resource Managers of Lowe's, requests the following relief:

- a. Designation of this action as a collective action.
- b. That Ms. Glover be allowed to give notice of this collective action, or that this Court issue such notice at the earliest possible time; to all past and present Human Resources Managers employed by Lowe's at any time during the three (3) year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice for each respective class;
- c. Designate Ms. Glover as a Representative of the Collective Class for purposes of engaging in mediation, with the authority to execute any Collective Class settlement agreement the parties might reach, which is subject to Court's approval before making any such agreement binding.
- d. That all past and present Human Resources Managers be informed of the nature of this collective action, and similarly situated employee's right to join this lawsuit if they believe that they were or are

misclassified as an exempt employee;

- e. That the Court find Lowe's in violation of the overtime compensation provisions of the FLSA;
- f. That the Court find Lowe's violation of the FLSA was and is willful;
- g. That the Court enjoin Lowe's, pursuant to 29 U.S.C. §217, from withholding future payment of overtime compensation owed to members of the Plaintiff Class.
- h. That the Court award to Ms. Glover, and the Plaintiff Class, comprised of all similarly situated employees, overtime compensation for previous hours worked in excess of forty (40) for any given week during the past three years AND liquidated damages of an equal amount of the overtime compensation, in addition to penalties and interest on said award pursuant to FLSA §216 and all other related economic losses;
- i. That the Court award Ms. Glover and the Plaintiff Class reasonable attorneys' fees and costs pursuant to FLSA §216, including expert fees;
- j. That the Court award Ms. Glover a Class Representative fee for the justice she sought out on for so many.
- k. That the Court issue a declaratory judgment under 29 U.S.C 216-17, 28 U.S.C. 2201 and 2202 for that practices complained of herein and that the Defendants violated the FLSA, and that such violation was purposely and uniformly misclassified all Human Resource Managers as exempt, which has resulted in a loss of compensation due to them in both wages and retirement benefits;
- l. Pre-judgment and post-judgment interest, as provided by law: and
- m. That the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions so triable raised by the Complaint.

Dated: September 29, 2014

Respectfully Submitted,

/s/ Dale Morgado _____

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