

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

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**THERESA KIDD, RHONDA PEDEN,**  
and **LAURIE KESLER**, Individually and on  
behalf of others similarly situated,

Plaintiff,

vs.

Case No. 1:19-cv-245-HSO-JCG

**LOWE’S HOME CENTERS, LLC,**  
A North Carolina Limited Liability Company,  
**LOWE’S COMPANIES, INC.,** A North Carolina  
Corporation, and **LOWE’S HIW, INC.,** a  
Washington Corporation,

FLSA Collective Action  
**JURY DEMANDED**

Defendants.

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**ORIGINAL COLLECTIVE ACTION COMPLAINT**

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Plaintiffs, Theresa Kidd, Rhonda Peden, and Laurie Kesler (“Plaintiffs”) individually and on behalf of others similarly situated, sue the Defendants, Lowe’s Home Centers, LLC, Lowe’s Companies, Inc., and Lowe’s HIW, Inc. (“Defendants” or “Lowe’s”) and allege as follows:

**INTRODUCTION**

1. Plaintiffs were employees of Defendants and bring this action for unpaid overtime wages, liquidated damages, declaratory relief, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (“FLSA”).
2. Plaintiff Kidd worked for Defendants as a Project Specialist – Interiors employee (“PSI”) in D’Iberville, Mississippi during the statutory period.
3. Plaintiff Peden worked for Defendants as a Project Specialist – Interiors employee (“PSI”) in

Gulfport, Mississippi during the statutory period.

4. Plaintiff Kesler worked for Defendants as a Project Specialist – Interiors employee (“PSI”) in Gautier, Mississippi during the statutory period.
5. Defendants operate Lowe’s Home Improvement Stores throughout the country, including in, among other locations, the Southern District of Mississippi, and is therefore, within the jurisdiction of this Court.
6. This action is brought to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys’ fees and costs. This action is intended to include each and every similarly situated PSI who worked for Defendants nationwide at any time within the past three (3) years.
7. Defendants are and/or have been the “employer” of Plaintiffs within the meaning of 29 U.S.C. § 203(d) of the FLSA as well as employers of all other persons hired to work for Defendants as PSIs.
8. During Plaintiffs’ employment with Defendants, Defendants earned more than \$500,000.00 per year in gross sales.
9. During Plaintiffs’ employment with Defendants, Defendants employed two or more employees which handled goods, materials and supplies which had travelled in interstate commerce.
10. Included in such goods, materials and supplies were computer equipment, telephones, office equipment and other goods, materials and supplies which originated from outside the state of Mississippi.
11. Defendants accepted credit card payments for goods and services in the state of Mississippi. These credit card payments were processed outside the state of Mississippi.

12. Therefore, Defendants are an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

### **JURISDICTION AND VENUE**

13. This Court has original jurisdiction over this action under 29 U.S.C. §§ 201, *et seq.*, 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiffs were employed by Defendants to perform work in this District and said Defendants have conducted business within this District at all relevant time periods to this action. In addition, a substantial part of the events, commissions, inactions and omissions giving rise to these claims and this action occurred within this District.

### **PARTIES**

15. Defendants Lowe's Home Centers, LLC is a North Carolina Limited Liability Company with its principal office and address located at 1000 Lowes Blvd., Mooresville, North Carolina 28117. According to the Mississippi Secretary of State, Lowe's Home Centers, LLC may be served through Corporation Service Company, its registered agent, for service of process at 7716 Old Canton Road, Suite C, Madison, Mississippi 39110.

16. Defendant Lowe's Companies, Inc. is a North Carolina Corporation with its principal office and address located at 1000 Lowes Blvd., Mooresville, North Carolina 28117. According to the North Carolina Secretary of State, Lowe's Companies, Inc. may be served through Corporation Service Company, its registered agent, for service of process at 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608.

17. Defendant Lowe's HIW, Inc. is a Washington State Corporation with its principal office and address located at 101 Andover Park East, Suite 200, Tukwila, Washington 98188.

According to the Washington Secretary of State, Lowe's HIW, Inc. may be served through Corporation Service Company, its registered agent, for service of process at 300 Deschutes Way SW, Suite 304, Tumwater, Washington, 98501.

18. Plaintiff Theresa Kidd is an adult citizen of the United States and was employed as a PSI of Defendants in this district during all times relevant to this action. Plaintiff Kidd's "Consent to Join" is attached as *Exhibit A*.
19. Plaintiff Rhonda Peden is an adult citizen of the United States and was employed as a PSI of Defendants in this district during all times relevant to this action. Plaintiff Peden's "Consent to Join" is attached as *Exhibit B*.
20. Plaintiff Laurie Kesler is an adult citizen of the United States and was employed as a PSI of Defendants in this district during all times relevant to this action. Plaintiff Kesler's "Consent to Join" is attached as *Exhibit C*.

### **FACTUAL ALLEGATIONS**

21. Named Plaintiffs all worked as PSIs for Defendants during the relevant statutory period.
22. During their employment with Defendants, Plaintiffs and other PSIs were classified as "exempt" from the overtime provisions of the FLSA.
23. Defendants employed thousands of other similarly situated employees at their Lowe's locations throughout the country whose job duties were similar to Plaintiffs and who were compensated in a similar manner as Plaintiffs.
24. Defendants classified PSIs as salary exempt employees and based their salary on a forty (40) hour work week even though they were required to work well over forty (40) hours per week.
25. A review of PSIs' job duties show that these employees should have been classified as non-exempt employees under federal law and paid overtime.

26. Plaintiffs and others similarly situated PSIs worked a Lowe's "corporate schedule" that required PSIs to work in a Lowe's store six (6) days a week. This resulted in Plaintiffs and similarly situated PSIs working approximately 48 to 60 hours per week in a Lowe's store.
27. Plaintiffs and similarly situated PSIs were not customarily and regularly engaged away from Lowe's stores, or in other words Lowe's place(s) of business.
28. Plaintiffs and similarly situated PSIs did not make sales at the customers' place of business or in the customers' homes.
29. As a result, Plaintiffs and the similarly situated PSIs have not been paid overtime compensation as required by law for the overtime hours worked by them.
30. Defendants treated Plaintiffs and other similarly situated PSIs as exempt from overtime because it was in their financial interest to do so and failed to pay Plaintiffs and the putative class overtime compensation for all hours worked over forty (40) within weekly pay periods during the relevant statutory period.
31. Defendants have violated the FLSA by its failure to pay PSIs complete and proper overtime compensation for overtime hours worked by PSIs.
32. Upon information and belief, the records, to the extent any exist and are accurate, concerning the number of hours worked and amounts paid to Plaintiffs and other similarly situated employees, are in the possession and custody of Defendants.

**CLASS DESCRIPTION**

33. Plaintiffs bring this action on behalf of the following similarly situated person:

All current and former persons who were employed by Lowe's Home Centers, LLC, Lowes Companies, Inc. or Lowes HIW Inc. (or any predecessor company) as a Project Specialist – Interiors ("PSI") in the United States at any time during the

applicable statutory period covered by this Collective Action Complaint (i.e. two years for FLSA violations, and three years for willful FLSA violations) up to and including the date of final judgment in this matter, and who is the Named Plaintiff and those who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b). (Collectively, “the class”).

### **COLLECTIVE ACTION ALLEGATIONS**

34. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.
35. Plaintiffs bring this action on behalf of themselves and the class as a collective action pursuant to the FLSA, 29 U.S.C. §§ 206, 207, and 216(b).
36. The claims under the FLSA may be pursued by those who opt-in to this case under 29 U.S.C. § 216(b).
37. The members of the class are so numerous that joinder of all other members of the class is impracticable. While the exact number of the other members of the class is unknown to Plaintiffs at this time, and can only be ascertained through applicable discovery, Plaintiffs believe there are thousands of individuals in the class.
38. The claims of Plaintiffs are typical of the claims of the class. Plaintiffs and the other members of the class work or have worked for Defendants and were subject to the same operational, compensation and pay plans, policies, and practices, including the failure of Defendants to pay Plaintiffs and others similarly situated employees overtime compensation for all hours worked in excess of forty (40) hours within weekly pay periods during all times relevant to this action.
39. Common questions of law and fact exist as to the class which predominate over any

questions only affecting other members of the class individually and include, but are not limited to, the following:

- Whether Defendants required Plaintiffs and other members of the class to work hours in excess of forty (40) per week within weekly pay periods of the limitations' period, without being compensated at one and one-half times their regular hourly rate of pay for all such overtime hours;
- Whether Plaintiffs and other members of the class were exempt from the FLSA overtime requirements during times relevant to this action;
- Whether Defendants failed to pay Plaintiffs and other members of the class all applicable straight and overtime wages for all hours worked in excess of forty (40) hours per week within weekly pay periods during all times relevant to this action;
- The correct statutes of limitations for Plaintiffs' claims and the claims of the other members of the class;
- Whether Plaintiffs and other members of the class are entitled to damages, including but not limited to liquidated damages, and the measure of the damages; and
- Whether Defendants are liable for interest, attorneys' interest, fees, and costs.

40. Plaintiffs will fairly and adequately protect the interests of the class as their interests are aligned with those of the other members of the class. Plaintiffs have no interests adverse to the class, and Plaintiffs have retained competent counsel who are experienced in collective action litigation.

41. The collective action mechanism is superior to the other available methods for a fair and efficient adjudication of the controversy. The expenses, costs, and burden of litigation suffered by individual members of the class in a collective action are relatively small in

comparison to the expenses, costs, and burden of the litigation of individual actions, making it virtually impossible for other members of the class to individually seek redress for the wrongs done to them.

42. Plaintiffs and other members of the class have suffered and will continue to suffer irreparable damage from the unlawful pay policies, practices, and procedures implemented and administered by Defendant.

43. Defendants are unable to bear their burden of showing that Plaintiff and those similarly situated fall within any of the FLSA overtime exemptions, including but not limited to those announced in 29 C.F.R. §§ 541.300, 541.301, 541.302, 541.303, or 541.304.

#### **COUNT I - RECOVERY OF OVERTIME COMPENSATION**

44. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

45. Plaintiffs and other similarly situated PSIs were misclassified by Lowe's as exempt employees when they should have been classified as non-exempt employees entitled to overtime compensation.

46. During their employment with Defendants, Plaintiffs and other PSIs worked overtime but were not paid overtime compensation.

47. Defendants did not have a good faith basis for misclassifying PSIs as exempt and Defendants are unable to bear their burden of demonstrating that Plaintiffs and other class members fall within any of the FLSA overtime exemptions, including the outside sales exemption.

48. As a result of Defendants' intentional, willful and unlawful acts in failing to pay Plaintiffs and other PSIs complete overtime compensation, Plaintiffs and other PSIs have suffered damages plus incurring reasonable attorneys' fees and costs.



49. As a result of Defendants' willful violation of the FLSA, Plaintiffs and other PSIs are entitled to liquidated damages.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs, individually and on behalf of themselves and all other similarly situated members of the class, demand judgment, jointly and severally, against Defendants as well as to request this Court to grant the following relief against said Defendants:

- A. Designation of this cause as a collective action on behalf of the class and promptly issue notice pursuant to 29 U.S.C. § 216(b), apprising class members of the pendency of this action and permitting other members of the class to assert timely FLSA claims in this action by filing individual Consents under 29 U.S.C. § 216(b);
- B. An award of compensation for unpaid overtime to Plaintiffs and other members of the class;
- C. An award of liquidated damages to Plaintiffs and other members of the class;
- D. An award of prejudgment and post-judgment interest at the applicable legal rate to Plaintiffs and other members of the class;
- E. An award of costs, expenses, and disbursements relating to this action together with reasonable attorneys' fees and expert fees to Plaintiffs and other members of the class;
- F. A ruling that the three-year statutory period for willful violations under the FLSA shall apply in this action;
- G. A Declaration that Plaintiffs and other members of the class were misclassified as exempt and entitled to unpaid overtime damages to be proven at trial;
- H. A Declaration that Defendants have willfully violated the FLSA;

- I. Award a reasonable incentive award for the Plaintiffs to compensate them for the time and effort they have spent protecting the interests of other PSIs and the risks they have undertaken; and
- J. Such other general and specific relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

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

Dated: April 17, 2019.

Respectfully Submitted,

*/s/ Garner J. Wetzel*  
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Garner J. Wetzel (MSB No. 103596)  
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&

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Robert E. Morelli, III (TN BPR #37004)\*  
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*rturner@jsyc.com*  
*rmorelli@jsyc.com*

*Attorneys for Named Plaintiffs, on behalf of themselves and all other similarly situated current and former employees*

*\*Admission Pro Hac Vice Anticipated*

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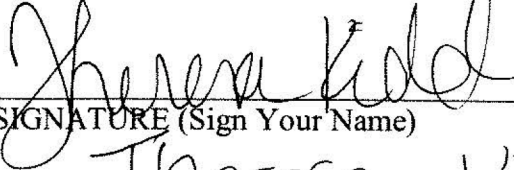
Defendants.

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**CONSENT TO BECOME NAMED REPRESENTATIVE PLAINTIFF**

---

By my signature below, I hereby consent to become a Party Plaintiff and Named Representative Plaintiff and authorize the prosecution of a collective action under the Fair Labor Standards Act against Lowe's Home Centers, LLC, Lowe's Companies, Inc. and related entities to recover any unpaid wages in my name, on my behalf and on behalf of other similarly situated Project Specialist – Interiors employees. I understand that as a Named Representative Plaintiff, I will be making decisions regarding this litigation, the method and manner of conducting this litigation, the entering of an agreement with counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. I agree to keep counsel for Plaintiffs informed as to my correct mailing address and telephone number.

  
\_\_\_\_\_  
SIGNATURE (Sign Your Name)

Theresa Kidd  
\_\_\_\_\_  
Print Name

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\_\_\_\_\_  
SIGNATURE (Sign Your Name)

RHONDA MELISSA PEDEN

Print Name

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\_\_\_\_\_  
SIGNATURE (Sign Your Name)

Laurie A. Kesler

\_\_\_\_\_  
Print Name

**EXHIBIT C**



CIVIL COVER SHEET

1:19-cv-245-HSO-JCG

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THERESA KIDD, RHONDA PEDEN, and LAURIE KESLER, et al.

(b) County of Residence of First Listed Plaintiff Harrison County, MS (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

WETZEL LAW FIRM; 1701 24th Avenue, Post Office Box 1; Gulfport, MS 39502; (228) 864-6400

DEFENDANTS

LOWE'S HOME CENTERS, LLC, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC 201, et seq.

Brief description of cause: Collective Action under 216(b) of the Fair Labor Standards Act for the recovery of unpaid wages.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/17/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Garner J. Wetzel

FOR OFFICE USE ONLY

RECEIPT # 0538-3969354 AMOUNT \$400.00 APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Unpaid Overtime Collective Action Filed Against Lowe's](#)

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