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19  
20 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

21 U.S. EQUAL EMPLOYMENT  
22 OPPORTUNITY COMMISSION,

23 Plaintiff,

24 v.

25 LOWE'S COMPANIES, INC. and  
26 LOWE'S HOME CENTERS, LLC.

27 Defendants.  
28

CASE NO.: 2:16-CV-03041-AB (FFMx)

~~[PROPOSED]~~ **CONSENT DECREE  
AND ORDER**

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Lowe's Home Centers, LLC.

**INTRODUCTION**

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC") and Defendants Lowe's Companies, Inc. and Lowe's Home Centers, LLC (hereinafter collectively referred to as "Defendants") hereby stipulate and agree to entry of this Consent Decree ("Decree") to resolve the following as to all employees who have claims within the scope of the following Complaint and Charges:

A. The EEOC has conducted an investigation of charges brought by Leslie A. Tanimoto (EEOC Charge of Discrimination No. 486-2007-00331), David Shaw (EEOC Charge of Discrimination No. 520-2009-00075), and Gary White (EEOC Charge of Discrimination No. 846-2009-18121) ("Charging Parties"), three former employees of Lowe's HIW, Inc. and Lowe's Home Centers Inc., subsidiaries of Lowe's Companies, Inc. and predecessors to Lowe's Home Centers, LLC (collectively, "Lowe's"), under Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112. The Charging Parties have alleged that Lowe's violated the ADA by terminating them and a class of employees whose medical leave of absence exceeded Lowe's 180-day (and, subsequently, 240-day) maximum leave policy. The Parties desire to resolve these charges. The Charging Parties, the EEOC, and Lowe's do hereby resolve this matter as follows:

B. The EEOC Charge of Discrimination No. 486-2007-00331 (Tanimoto/Lowe's HIW, Inc.) filed on June 13, 2007, alleging that Lowe's HIW, Inc. refused to provide Tanimoto with a reasonable accommodation in the form of an

1 extended medical leave of absence and terminated her employment in violation of the  
2 ADA.

3 C. The EEOC Charge of Discrimination No. 520-2009-00075 (David  
4 Shaw/Lowe's Home Centers, Inc.) filed on October 27, 2008, alleging that Lowe's  
5 Home Centers, Inc. refused to provide Shaw with a reasonable accommodation in the  
6 form of an extended medical leave of absence and terminated his employment in  
7 violation of the ADA.

8 D. The EEOC Charge of Discrimination No. 846-2009-18121 (Gary  
9 White/Lowe's Home Centers, Inc.) filed on March 25, 2010, alleging that Lowe's  
10 Home Centers, Inc. refused to provide White with a reasonable accommodation in the  
11 form of an extended medical leave of absence and terminated his employment in  
12 violation of the ADA.

13 E. Defendants deny all allegations set forth in or within the reasonable  
14 scope of Charging Parties' charges of discrimination and this Lawsuit. Nothing in the  
15 Decree shall be construed as an admission by Defendants.

16 **I.**

17 **PURPOSES OF THE DECREE**

18 A. The Parties to this Decree are the EEOC and Defendants. This Decree  
19 shall be binding on and enforceable against Defendants and their respective officers,  
20 directors, agents, successors and assigns.

21 B. The Parties have entered into this Decree for the following purposes:  
22 1. To provide appropriate monetary and injunctive relief;  
23 2. To resolve completely and fully all claims EEOC and Charging  
24 Parties may have in this matter and in Charging Parties' charges of discrimination;  
25 3. To ensure employment practices in compliance with federal law;  
26 4. To ensure a workplace free from retaliation;  
27  
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1 **III.**

2 **JURISDICTION**

3 A. The Court has jurisdiction over the parties and the subject matter of this  
4 Lawsuit, which arises from EEOC Charges of Discrimination Nos. 486-2007-00331,  
5 520-2009-00075 and 846-2009-18121. The Lawsuit asserts claims that, if proven,  
6 would authorize the Court to grant the equitable relief set forth in this Decree.

7 B. The terms and provisions of this Decree are fair, reasonable, and just.

8 C. This Decree conforms with the Federal Rules of Civil Procedure and the  
9 ADA/ADAAA and is not in derogation of the rights or privileges of any person.

10 D. The Court shall retain jurisdiction of the Lawsuit during the duration of  
11 the Decree for the purposes of entering any order, judgment, or decree that may be  
12 necessary to implement the relief provided herein.

13 **IV.**

14 **EFFECTIVE DATE AND DURATION OF DECREE**

15 A. The provisions and agreements contained herein are effective  
16 immediately upon the date which this Decree is entered by the Court (“the Effective  
17 Date”).

18 B. Except as otherwise provided herein, this Decree shall remain in effect  
19 for four (4) years after the Effective Date.

20 **V.**

21 **MODIFICATION AND SEVERABILITY**

22 A. This Decree constitutes the complete understanding of the Parties with  
23 respect to the matters contained herein.

24 B. By mutual agreement of the Parties, this Decree may be amended or  
25 modified in the interests of justice and fairness in order to effectuate the provisions of  
26 the Decree. No waiver, modification, or amendment of any provision of this Decree  
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1 will be effective unless made in writing and signed by an authorized representative of  
2 each of the Parties.

3 C. If one or more of the provisions of the Decree are rendered unlawful or  
4 unenforceable, the Parties shall make good faith efforts to agree upon appropriate  
5 amendments to this Decree in order to effectuate the purposes of the Decree. In any  
6 event, the remaining provisions will remain in full force and effect unless the purposes  
7 of the Decree cannot, despite the Parties' best efforts, be achieved.

## 8 VI.

### 9 COMPLIANCE AND RESOLUTION

10 A. The Parties expressly agree that if the EEOC has reason to believe that  
11 Defendants have failed to comply with any provision of this Decree, the EEOC may  
12 bring an action before this Court to enforce the Decree. Prior to initiating such action,  
13 the EEOC will notify Defendants and their legal counsel of record, in writing, of the  
14 nature of the dispute. This notice shall specify the particular provision(s) that the  
15 EEOC believes Defendants have breached. Upon receipt, Defendants shall  
16 acknowledge, in writing, receipt of the notice. Defendants shall have sixty (60) days  
17 from the date it acknowledges receipt of the notice to attempt to resolve or cure the  
18 breach, however, the Parties can agree to extend this period upon mutual consent.

19 B. The Parties agree to cooperate with each other and use their best efforts  
20 to resolve any dispute referenced in the EEOC notice.

21 C. After sixty (60) days have passed with no resolution or agreement to  
22 extend the time further, the EEOC may petition this Court for resolution of the  
23 dispute, seeking all available relief deemed appropriate by the Court, including an  
24 extension of the term of the Decree for such period of time as Defendants or their  
25 successors are shown to be in breach of the Decree.

1 **VII.**

2 **MONETARY RELIEF**

3 A. Monetary Relief – Class Fund and Payments to Charging Parties

4 In settlement of this Lawsuit and EEOC Charges of Discrimination Nos. 486-  
 5 2007-00331, 520-2009-00075 and 846-2009-18121, Defendants shall pay the gross  
 6 sum of Eight Million Six Hundred Thousand Dollars (\$8,600,000) (“Gross Sum”).  
 7 The Gross Sum is inclusive of all monetary relief to be paid to the three Charging  
 8 Parties and a “Class Fund” representing back pay and other monetary relief, as defined  
 9 and specified below, to be paid to Eligible Claimants, as defined below. EEOC has  
 10 full and complete discretion under the terms of this Decree to determine the amounts  
 11 of any payments to be distributed from the Class Fund to an Eligible Claimant and the  
 12 characterization of such payments as income, wages or otherwise, as hereinafter  
 13 described in this Decree. The EEOC defines an Eligible Claimant to take from the  
 14 Class Fund if he/she was subjected to the maximum leave policy at issue in violation  
 15 of the ADA and/or the ADAAA and was a disabled individual, associated with  
 16 someone with a disability, had a record of a disability, and/or was regarded as being  
 17 disabled. The EEOC has sole discretion to determine who is an Eligible Claimant.

18 B. Monetary Relief – Charging Parties Tanimoto, Shaw and White

19 1. In settlement of Charging Party Leslie Tanimoto’s claims in  
 20 Charge No. 486-2007-00331, Defendants shall pay to her such portion of the Gross  
 21 Sum as designated by the EEOC.

22 2. In settlement of Charging Party David Shaw’s claims in Charge  
 23 No. 520-2009-00075, Defendants shall pay to him such portion of the Gross Sum as  
 24 designated by the EEOC.

25 3. In settlement of Charging Party Gary White’s claims in Charge  
 26 No. 846-2009-18121, Defendants shall pay to him such portion of the Gross Sum as  
 27 designated by the EEOC.  
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1           4.     EEOC shall provide Defendants a Distribution List designating  
2     payment amounts to Tanimoto, White, and Shaw. Within ten (10) days of receiving  
3     the EEOC's Distribution list and funding the Class Fund, Defendants or their claims  
4     administrator shall forward, via first class mail, checks from the Class Fund in the  
5     amounts designated in the EEOC's Distribution List, less applicable withholdings, to  
6     the Charging Parties. Within three (3) business days of mailing the aforementioned  
7     payments, Defendants or their claims administrator shall submit a copy of the checks  
8     and any related correspondence to Anna Y. Park, Regional Attorney, U.S. Equal  
9     Employment Opportunity Commission, 255 East Temple Street, 4<sup>th</sup> Floor, Los  
10    Angeles, California 90012. Payments to Tanimoto, Shaw, and White will be paid to  
11    each in two checks: (a) a non-wage compensation check will be issued for damages  
12    in the form of emotional pain and suffering, and for this payment Defendants or their  
13    claims administrator, in the ordinary course, shall prepare and distribute 1099 tax  
14    reporting forms to Tanimoto, Shaw, and White, if required by law, and shall make  
15    any appropriate reports to the Internal Revenue Service and other tax authorities; and  
16    (b) a wage payment, which payment will be treated as wages, subject to deductions  
17    for federal and state withholding taxes and other deductions Defendants or their  
18    claims administrator are required by law to make. Defendants shall pay the  
19    employer's portion of all deductions required by law, including but not limited to  
20    FICA and FUTA taxes, and such amounts shall not be deducted from payment of the  
21    monetary settlement amounts of Tanimoto, Shaw, or White. Defendants or their  
22    claims administrator, in the ordinary course, shall prepare and distribute W-2 forms  
23    to Tanimoto, Shaw, and White. To the extent checks need to be reissued, EEOC will  
24    notify Defendants or their claims administrator. The EEOC will inform the  
25    Defendants of the allocation for wage and non-wage compensation for Tanimoto,  
26    Shaw, and White.



1           C.     Monetary Relief – Class Fund

2           In settlement of the class-based claims in (1) this Lawsuit and (2) EEOC  
 3 Charges of Discrimination Nos. 486-2007-00331, 520-2009-00075 and 846-2009-  
 4 18121 collectively, Defendants shall establish a qualified settlement fund (the “Class  
 5 Fund”) in the amount of Eight Million Six Hundred Thousand Dollars (\$8,600,000).  
 6 Within fifteen (15) days of the Effective Date, Defendants shall deposit the Class  
 7 Fund amount in a segregated interest bearing account from which all payments for  
 8 class-based claims will be made. Defendants or their claims administrator shall make  
 9 required payments to Charging Parties from the Class Fund. Any interest earned at  
 10 the rate available to Defendants when the account is established will be maintained in  
 11 the account and disbursed to the class as designated by EEOC or distributed to the  
 12 agreed-upon charity as detailed below. A report of the amount of interest prior to the  
 13 final distribution shall be given to the EEOC to ensure distribution of the entire Class  
 14 Fund.

15           Acceptance of any monies by Eligible Claimants and the Charging Parties in no  
 16 way impact or disqualify them from seeking employment with Defendants and any of  
 17 their subsidiaries in the future.

18           D.     Claims Notice Process

19           1.     Defendants or their claims administrator shall provide notice as  
 20 follows to any former employee of Defendants who was terminated at any time  
 21 between January 1, 2004 and May 13, 2010, after having taken the maximum amount  
 22 of leave then available under Defendants’ leave of absence policies (“Potential  
 23 Claimants”) or to the extent such Potential Claimants are identified by the EEOC.

24           a.     Within sixty (60) days of the Effective Date, the Defendants  
 25 or their claims administrator shall

26                   i.     determine the validity of each such Potential  
 27 Claimant’s most-recent address utilizing the National Change of Address Database,  
 28

1                   ii.     send to each such Potential Claimant, via first class  
2 mail, a Notice Letter, attached as Exhibit A, 1) notifying the Potential Claimant of his  
3 or her ability to file a claim for monetary relief, 2) providing the Potential Claimant  
4 with instructions on how to file a claim on-line with the claims administrator, 3)  
5 providing the Potential Claimant with the opportunity to seek assistance in completing  
6 the on-line claim, 4) enclosing a claim form or forms, attached as Exhibit B, and 5)  
7 providing contact information for the EEOC,

8                   iii.    provide to the EEOC certification that the Defendants  
9 or their claims administrator mailed a Notice Letter to each such Potential Claimant,  
10 and

11                  iv.    instruct the USPS to notify Defendants or their claims  
12 administrator of any undeliverable Notice Letters.

13 Any such Potential Claimant whose original Notice Letter is not returned  
14 undeliverable shall have ninety (90) days from the date the Defendants or their claims  
15 administrator mailed an unreturned Notice Letter to submit a claim form.

16                  b.     Within thirty (30) days of any Notice Letter being returned  
17 to sender as undeliverable, Defendants or their claims administrator shall

18                   i.     research such Potential Claimant's most-recent  
19 address and further use its best efforts, including a search of a database such as  
20 Accurant, to locate such Potential Claimant,

21                   ii.    if Defendants or their claims administrator find a  
22 more-recent address for such Potential Claimant, mail the Notice Letter to such  
23 Potential Claimant at the more-recent address, and

24                   iii.   if Defendants or their claims administrator fail to find  
25 a more recent address for any such Potential Claimant(s), Defendants or their claims  
26 administrator shall in thirty (30) day intervals following the mailing of the first group  
27  
28

1 of Notice Letters, provide to the EEOC certification outlining efforts to locate such  
2 Potential Claimant(s).

3 Any such Potential Claimant whose original Notice Letter was returned undeliverable  
4 shall have ninety (90) days from the date of the re-mailing to submit a claim form.

5 Any such Potential Claimant whose original Notice Letter is returned undeliverable  
6 and for whom Defendants or their claims administrator cannot find a more-recent  
7 address within ninety (90) days of the Notice Letter being returned to sender as  
8 undeliverable shall not be entitled to collect from the Class Fund, unless the EEOC  
9 exercises reasonable discretion to determine otherwise. Any such Potential Claimant  
10 whose second, re-mailed Notice Letter is returned undeliverable shall not be entitled  
11 to collect from the Class Fund, unless the EEOC exercises reasonable discretion to  
12 determine otherwise. At thirty (30) day intervals after mailing of the first group of  
13 second, re-mailed Notice Letters, Defendants or their claims administrator shall  
14 forward to EEOC either any second, re-mailed Notice Letter that has been returned  
15 undeliverable or a list identifying any Potential Claimant whose second, re-mailed  
16 Notice Letter was returned undeliverable. Any Potential Claimant whose original  
17 Notice Letter or re-mailed Notice Letter is returned undeliverable more than one  
18 hundred twenty (120) days after mailing shall not be entitled to collect from the Class  
19 Fund, unless the EEOC exercises reasonable discretion to determine otherwise.

20 E. Claims Distribution Process

21 1. At thirty (30) day intervals after mailing the first group of Notice  
22 Letters, Defendants or their claims administrator shall forward to the EEOC any  
23 submitted or entered Claim Form received from any Potential Claimant. The claims  
24 administrator shall provide Defendants and the EEOC electronic access to the claims  
25 filed on-line. Defendants shall ensure that the claims administrator has access to the  
26 EEOC and that the claims administrator works with the EEOC to identify qualifying  
27  
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1 Eligible Claimants in accordance with the EEOC's criteria. The EEOC shall have  
2 sole discretion to determine who is an Eligible Claimant.

3 2. The EEOC shall have the sole discretion to designate the amount  
4 of the Class Fund to be distributed to each Eligible Claimant

5 3. Within one hundred twenty (120) days of the final re-mailing  
6 required in VII.D.1.b. above, the EEOC shall issue a Distribution List to Defendants  
7 and the claims administrator. Within sixty (60) days of receipt of the EEOC's  
8 Distribution List, Defendants or their claims administrator shall forward via first class  
9 mail to each Eligible Claimant payments for a gross amount equal to the full amount  
10 set forth in the Distribution List, as described below. Each check will state the  
11 following: "By accepting this check, you release any claim you may have that  
12 Lowe's violated the Americans with Disabilities Act by terminating you because  
13 your medical leave exceeded its maximum leave policy, and waive your right to sue  
14 Lowe's on such a claim." Each check will remain valid for 90 days. To the extent  
15 checks need to be reissued, EEOC will notify Defendant or its claims administrator.

16 a. For any Eligible Claimant EEOC designates as receiving an  
17 amount for damages only in the form of emotional pain and suffering, as opposed to  
18 damages for emotional pain and suffering in addition to damages for lost wages,  
19 Defendants or their claims administrator shall mail a non-wage compensation check  
20 which will be one-hundred percent (100%) of the distribution amount. Defendants or  
21 their claims administrator shall prepare and distribute a 1099 tax reporting form to  
22 each such Eligible Claimant, if required by law, and shall make any appropriate  
23 reports to the Internal Revenue Service and other tax authorities. Within three (3)  
24 business days of mailing the aforementioned payments, Defendants or their claims  
25 administrator shall submit a report regarding the mailing of the checks to Anna Y.  
26 Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East  
27 Temple Street, 4<sup>th</sup> Floor, Los Angeles, California 90012. The report shall show the  
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1 amount of the check, the date the check was mailed, the person to whom the check  
2 was mailed, and the address to which the check was mailed.

3           b. For any Eligible Claimant EEOC designates as receiving an  
4 amount for damages both in the form of emotional pain and suffering and in the form  
5 of lost wages, Defendants or their claims administrator shall mail two checks for a  
6 gross amount equal to the full amount set forth in the Distribution List. The two  
7 checks will include one check for non-wage compensation for damages in the form of  
8 emotional pain and suffering, and one check for wage compensation for damages in  
9 the form of lost wages. The non-wage check will be ninety percent (90%) of the  
10 distribution amount, and for this payment Defendants or their claims administrator  
11 shall prepare and distribute a 1099 tax reporting form to each claimant, if required by  
12 law, and shall make any appropriate reports to the Internal Revenue Service and other  
13 tax authorities. The wage check will be ten percent (10%) of the distribution amount,  
14 which payment will be treated as wages, subject to deductions for federal and state  
15 withholding taxes and other deductions Defendants or their claims administrator are  
16 required by law to make. For each wage check, Defendants or their claims  
17 administrator shall (a) pay the employer's portion of all deductions required by law,  
18 including but not limited to FICA and FUTA taxes, and such amounts shall not be  
19 deducted from wage payments to the claimants and (b) prepare and distribute a W-2  
20 form to each claimant in the ordinary course. Within three (3) business days of  
21 mailing the aforementioned payments, Defendants or their claims administrator shall  
22 submit a report regarding the mailing of the checks to Anna Y. Park, Regional  
23 Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street,  
24 4<sup>th</sup> Floor, Los Angeles, California 90012. The report shall show the amount of the  
25 check, the date the check was mailed, the person to whom the check was mailed, and  
26 the address to which the check was mailed. To the extent checks need to be reissued,  
27 EEOC will notify Defendant or its claims administrator.

1           4. At least every sixty (60) days after Defendants or their claim  
2 administrator issue checks pursuant to the Distribution List, Defendants or their  
3 claims administrator shall provide the EEOC with a report listing cancelled checks,  
4 and identifying any check not negotiated and/or returned non-negotiated to  
5 Defendants or their claim administrator, to enable the Parties to track remaining  
6 settlement funds for redistribution.

7           5. The EEOC may subsequently issue additional Distribution Lists, as  
8 necessitated by further notice from Defendants or their claim administrator that any  
9 check issued to a Claimant was not negotiated within ninety (90) days after issuance  
10 and/or was returned non-negotiated to Defendants or their claims administrator. The  
11 EEOC shall make reasonable and good faith effort to provide a Distribution List no  
12 later than twelve months after the Effective Date, which shall be denoted as the  
13 “Final Distribution List” and shall include, in addition to any additional Eligible  
14 Claimants to be paid, any additional amounts to be remitted to Eligible Claimants  
15 previously paid. No further Distribution Lists shall be issued by the EEOC after the  
16 Final Distribution List is provided to Defendants or their claims administrator.  
17 Within sixty (60) days of receipt of the EEOC’s Final Distribution List, Defendant or  
18 its claims administrator shall forward via first class mail to each Eligible Claimant  
19 payments for a gross amount equal to the full amount set forth in the Distribution  
20 List. Within three (3) business days of mailing the aforementioned payments,  
21 Defendants or their claims administrator shall submit a report regarding the mailing  
22 of the checks to Anna Y. Park, Regional Attorney, U.S. Equal Employment  
23 Opportunity Commission, 255 East Temple Street, 4<sup>th</sup> Floor, Los Angeles, California  
24 90012. The report shall show the amount of the check, the date the check was  
25 mailed, the person to whom the check was mailed, and the address to which the  
26 check was mailed.

6. Defendants or their claims administrator will notify the EEOC of any funds remaining in the Class Fund at least 60 days before the expiration of the Decree. Within thirty (30) days of the latest date on which a check sent to a Claimant becomes void, money in the Class Fund that remains undistributed shall be donated to a charity that promotes equal opportunities for people with disabilities that is approved by the EEOC.

F. Extending Deadline to Return Claims Forms for Good Cause

For good cause, the EEOC may grant an exemption of any above-cited deadline to return a claims form, provided however that Defendants have no obligation to pay any money from the Class Fund to an Eligible Claimant or Potential Claimant after the date this Decree expires.

**VIII.**

**GENERAL INJUNCTIVE RELIEF**

A. Disability Discrimination

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns, and all those in participation with them, or any of them, are hereby enjoined not to discriminate against any individual in the terms and conditions of employment on the basis of disability.

B. Unlawful Maximum Leave Policies

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns, and all those in participation with them, or any of them, are hereby enjoined to ensure that they engage in the interactive process with any employee with a disability who requests leave as a reasonable accommodation.

C. Retaliation

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns and all those in participation with them, or any of them, are hereby enjoined not to engage in, implement or permit any action, policy, procedure, or



1 practice with the purpose of retaliating against any current or former employee or  
 2 applicant of Defendants or their successors, or either of them, because he or she has in  
 3 the past, or during the term of this Decree, (a) opposed any practice made unlawful  
 4 under the ADA/ADAAA; (b) filed a charge of discrimination alleging such practice;  
 5 (c) testified or participated in any manner in any investigation (including, without  
 6 limitation, any internal investigation undertaken by Defendants or their successors) or  
 7 proceeding in connection with this Lawsuit or Charging Parties' charges; (d) was  
 8 identified as a possible witness or claimant in this Lawsuit or Charging Parties'  
 9 charges; (e) asserted any rights under this Decree; or (f) sought and/or received any  
 10 relief in accordance with this Decree.

## 11 IX.

### 12 **SPECIFIC INJUNCTIVE RELIEF**

#### 13 A. Equal Employment Opportunity Consultant

14 1. Defendants have retained Equal Employment Opportunity  
 15 Consultants ("Consultants") that have been approved by the EEOC to assist  
 16 Defendants' with revisions to their leave of absence policies and compliance with the  
 17 ADA/ADAAA. The Consultants have demonstrated experience in the area of  
 18 employment discrimination and the ADA/ADAAA. Defendants shall ensure that the  
 19 Consultants continue to have access to documents and individuals necessary in  
 20 meeting their obligations under the Decree.

21 2. The Consultants' responsibilities shall include the following.

22 a. The Consultants will review policies for compliance with  
 23 the ADA. Specifically, the Consultants will work with Defendants concerning  
 24 employee requests for extended medical leaves of absence or other forms of  
 25 reasonable accommodation related to a return to duty following a medical leave of  
 26 absence, so that the policies continue to conform with the ADA/ADAAA,



1 employment discrimination laws and the provisions of this Decree. Consultants shall  
2 also review any Attendance Policies to for compliance with the ADA/ADAAA.

3                   b. The Consultants will advise Defendants concerning effective  
4 training for Defendants' employees, including training to ensure that all employees  
5 understand that a supervisor cannot discipline, suspend, or terminate an employee for  
6 complaining about disability discrimination, and that they understand how to file a  
7 complaint of disability discrimination or ADA retaliation.

8                   c. The Consultants will advise Defendants concerning effective  
9 training for Defendants' supervisory employees and human resources staff, including  
10 training to ensure Defendants' supervisors and human resources staff understand the  
11 responsibility for engaging in an interactive process in connection with end of leave or  
12 employees returning to duty after being on a leave of absence; understand that a  
13 supervisor cannot discipline an employee for filing a complaint relating to the failure  
14 to engage in the appropriate interactive process regarding potential reasonable  
15 accommodations; understand the procedures for responding to a complaint of  
16 disability discrimination or ADA retaliation; and understand the distinction between  
17 requirements of the ADA/ADAAA and the Family and Medical Leave Act.

18                   d. The Consultants will ensure that Defendants create a  
19 centralized system of tracking requests for accommodation.

20                   e. Annually through the term of the Decree, Defendants shall  
21 provide to Consultants a summary regarding accommodation requests (including  
22 requests for leave as an accommodation), the interactive process, accommodation  
23 decisions, and any complaints of disability discrimination or retaliation.

24                   f. Annually through the term of the Decree, Consultants will  
25 prepare a report to the EEOC regarding the matters addressed in Paragraph 2.a.  
26 through 2.e.

g. Defendants shall bear all costs associated with the selection and retention of the Consultants and the performance of his duties. Defendants will cooperate with Consultants to provide the information they reasonably need to discharge their duties under this Decree.

B. Policies and Procedures

1. Defendants shall maintain ADA/ADAAA policies and procedures that require Defendants to engage in the interactive process with disabled individuals who seek a medical leave of absence in excess of the amount of leave ordinarily provided to Defendants' employees, or who seek other forms of reasonable accommodation in connection with a return to duty from a medical leave of absence (the "Policies and Procedures").

2. Defendants shall ensure that their Attendance Policies also conform with the ADA/ADAAA.

3. The Policies and Procedures shall include the following:

a. a clear explanation of prohibited conduct, including a failure to engage in the interactive process with disabled individuals who seek a medical leave of absence in excess of the amount of leave ordinarily provided to Defendants' employees, or who seek other forms of reasonable accommodation in connection with a return from a medical leave of absence;

b. a clear explanation of employee rights and company policies with regard to leave requests and distinguishing clearly rights and obligations under the ADA/ADAAA which is separate and distinct from the Family Medical Leave Act;

c. a clear explanation of employee rights and company policies with regard to employee leave including the availability of additional leave as a reasonable accommodation under the ADA/ADAAA, and continued application of the Defendants' policies regarding Defendants' responsibility to engage in the interactive process in connection with the end of a medical leave of absence;

1                   d.     a clear explanation of procedures for providing effective  
2 reasonable accommodations to disabled individuals who seek a medical leave of  
3 absence in excess of the amount of leave ordinarily provided to Defendants’  
4 employees, or who seek other forms of reasonable accommodation in connection with  
5 a return to duty from a medical leave of absence, including accommodations  
6 concerning non-essential functions of the job such as training, job modification, and  
7 access to company facilities;

8                   e.     a clear explanation of the duties of supervisory and human  
9 resources employees in administering a timely interactive process and effective  
10 reasonable accommodations in connection with requests for additional medical leave  
11 of absence or other reasonable accommodations relating to a return to duty after a  
12 medical leave of absence; clear, step-by-step instructions and checklists outlining the  
13 interactive process and contact information for the personnel he/she can contact with  
14 questions, and an employee handout with a clear, step-by-step guide to the interactive  
15 process so the employee understands what is expected of him/her and what is required  
16 of Defendants during the process;

17                  f.     a clear explanation of the duties of supervisory and human  
18 resources employees in conducting a follow-up meeting with the applicant or  
19 employee to evaluate the continued effectiveness of any accommodation provided and  
20 to discuss whether further engagement in the interactive process if necessary;

21                  g.     notice that anyone who makes a complaint of disability  
22 discrimination or provides information related to such complaints are protected  
23 against retaliation; and

24                  h.     notice that Defendants will take prompt and appropriate  
25 corrective action when it determines that disability discrimination and/or ADA  
26 retaliation occurred.

1           4.     Within ninety (90) days of the Effective Date of this Decree,  
2 Defendants shall provide to the EEOC a copy of the Policies and Procedures. Within  
3 one hundred twenty (120) days of the Effective Date, Defendants shall ensure that it  
4 has distributed the Policies and Procedures to all employees, including management  
5 employees. Within one hundred twenty (120) days of the Effective Date, Defendants  
6 shall submit to the EEOC a statement confirming the distribution of the Policies and  
7 Procedures. Policies and Procedures shall be distributed annually through the term of  
8 the Decree.

9           5.     Within thirty (30) days of the hire date of any person hired after  
10 the initial distribution but within the term of the Decree, Defendants shall ensure that  
11 it has distributed the Policies and Procedures to that person.

12           C.     Posting of Notice of Consent Decree and Settlement

13 Within sixty (60) days of the Effective Date, Defendants shall ensure that it has posted  
14 the Notice of Consent Decree and Settlement (attached to this Decree as Exhibit C) in  
15 a conspicuous place accessible to all employees. Within sixty (60) days of the  
16 Effective Date, Defendant shall submit to the EEOC a statement confirming the  
17 posting of the Notice of Consent Decree and Settlement. The Notice of Consent  
18 Decree and Settlement shall be posted in a conspicuous place accessible to all  
19 employees.

20           D.     Training

21           1.     In consultation with the Consultants, Defendants shall continue to  
22 conduct employee trainings concerning the Policies and Procedures. However, the  
23 training can be conducted by a trainer of Defendants' choosing. The trainer shall  
24 submit training materials to the Consultants for review prior to the implementation of  
25 training under the terms of this Decree.

26           2.     Defendants will continue to provide training to each non-  
27 supervisory employee. The training shall cover the following:  
28

- a. the rule and purpose of the ADA/ADAAA;
- b. employee rights, including examples of qualifying disabilities and accommodations; and
- c. Defendants' accommodation request process, including how to notify Defendants of an accommodation request or potential need for an accommodation in connection with either a request for an extended medical leave of absence or requests for reasonable accommodation in connection with a return to duty after the conclusion of a medical leave of absence.

Within sixty (60) days of the hire date of any employee hired after any such training described above but within the term of the Decree, Defendants shall provide the required training in live, recorded or on-line format.

3. Defendants shall continue to provide live, recorded or on-line training to each manager or supervisor. Each training should have an interactive component. The training shall cover the following:

- a. each attendee's obligations under the ADA/ADAAA, including how to recognize an accommodation request or a potential need for an accommodation, how to respond to a request for accommodation or leave, how to engage in the interactive process, and how to respond to a complaint of disability discrimination;
- b. each trainee's obligations in complying with federal laws regarding employment discrimination on the basis of disability and retaliation, including the distinction between the requirements of the ADA/ADAAA and the Family and Medical Leave Act; and
- c. the interactive process as a means of exploring potential reasonable accommodations.

1 Within six months of the hire date of any manager or supervisor hired after any such  
2 training described above but within the term of the Decree, Defendants shall provide  
3 the required training in either live, recorded or on-line format with an interactive  
4 component.

5           4. Within one hundred twenty (120) days of the Effective Date and  
6 annually thereafter through the term of the Decree, Defendants shall provide live,  
7 recorded or on-line training of at least one-hour duration to human resources and  
8 compliance staff members who are responsible for determining whether additional  
9 leave is a reasonable accommodation and who have not previously received such  
10 training within the past 18 months. The training shall cover the following:

11           a. each trainee's obligations under the Policy, including how to  
12 respond to a complaint of discrimination, how to engage in the interactive process,  
13 and how to investigate a complaint of discrimination;

14           b. each trainee's obligations in complying with federal laws  
15 regarding employment discrimination on the basis of disability and retaliation,  
16 including the distinction between the requirements of the ADA/ADAAA and the  
17 Family and Medical Leave Act; and

18           c. each trainee's particular role in implementing an  
19 accommodation and monitoring its effectiveness.

20 Within six months of the hire date of any human resources/compliance staff member  
21 hired after any such training described above but within the term of the Decree,  
22 Defendants shall provide the required training in either live or recorded format.

23           5. Any persons required to attend any training under this Decree shall  
24 verify their attendance. Annually through the term of the Decree, Defendants shall  
25 produce to the EEOC documents verifying the occurrence of all training sessions  
26 required under this Decree, including the written training materials used, a  
27  
28

1 description of the training provided, and a statement verifying attendance at each  
2 training session as required in paragraph F.2..

3 E. Record Keeping

4 1. For each accommodation request Defendants receive from an  
5 employee, Defendants shall maintain records showing the following information:

- 6 a. person making the request;
- 7 b. date of the request;
- 8 c. physical or mental impairment;
- 9 d. accommodation(s) requested, if any;
- 10 e. any person to whom the request for accommodation was
- 11 made;
- 12 f. any person involved in the interactive process;
- 13 g. any person involved in the decision-making process
- 14 regarding the request for accommodation;
- 15 h. any records or documents made or reviewed in the course of
- 16 engaging in the interactive process; and
- 17 i. any accommodation provided, if any, and reason for the
- 18 decision.

19 2. In the event that there are any subsequent requests to modify an  
20 accommodation or to implement a different accommodation, Defendants shall  
21 maintain records showing all of the information in Paragraph E.1. above with respect  
22 to any such request with the relevant date of the request.

23 3. Defendants shall maintain an Accommodations Log showing  
24 successful and unsuccessful attempts to accommodate employees who have been on a  
25 leave of absence due to medical reasons. The log must contain (1) the name of the  
26 person making the request; (2) the date of the request; (3) accommodation requested;

1 (4) for successful accommodation requests, the accommodation provided; and (5) for  
2 unsuccessful requests, the reason the employee could not be accommodated.

3 4. Defendants shall make the records referred to in Paragraph E.1  
4 available for inspection and copying within ten (10) business days after the EEOC so  
5 requests. If the EEOC's request requires more than ten (10) business days for  
6 Defendants to comply, the Parties shall meet and confer regarding the request.

7 5. Defendants shall maintain all records required by this Decree and  
8 retain them throughout the term of the Decree.

9 F. Reporting

10 Defendants shall provide the following reports annually throughout the term of the  
11 Decree:

12 1. a statement verifying that all training sessions required under this  
13 Decree during the previous twelve (12) months occurred from the Effective Date;

14 2. a statement verifying that all employees required to attend a  
15 training session under this Decree during the previous twelve (12) months received  
16 the required training from the Effective Date;

17 3. a statement verifying that all employees required to receive the  
18 Policies and Procedures during the previous twelve (12) months received the Policies  
19 and Procedures from the Effective Date;

20 4. a copy of the Accommodations Log;

21 5. a summary of the procedures and record-keeping methods  
22 developed for centralized tracking of discrimination complaints and the monitoring of  
23 such complaints;

24 6. a summary report of investigation into any complaint about  
25 disability discrimination, disability harassment, and/or retaliation for complaining  
26 about disability discrimination and/or disability harassment. The investigation report  
27 shall include the following for each complaint during the reporting period:  
28



- a. the name, and title of the complaining party(ies) and alleged discriminating individual(s);
- b. the date of the complaint;
- c. the name and title of the person(s) who conducted the investigation into the complaint;
- d. the nature of the complaint;
- e. the date of the commencement and completion of the investigation;
- f. the outcome of the investigation and any action taken; and whether previous disability discrimination and/or harassment complaints had been made regarding the alleged harasser(s). If so, the report should also include the outcome of the prior investigations.

All reports under this Paragraph shall be directed to: U.S. Equal Employment Opportunity Commission, Attn. Regional Attorney, 255 E. Temple Street, 4<sup>th</sup> Floor, Los Angeles, CA 90012.

Within thirty (30) days of receipt of Defendant's Report, the EEOC may request in writing additional information regarding the Report. Within thirty (30) days of the receipt of the EEOC's request for additional information and/or the investigative file(s), Defendants are to respond to the EEOC's request for information.

## **X.**

### **MISCELLANEOUS PROVISIONS**

A. During the term of this Decree, Defendants shall provide any potential successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days prior to the execution of any agreement for acquisition or assumption of control of all of Defendants' facilities.

B. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street,

1 4<sup>th</sup> Floor, Los Angeles, California, 90012; facsimile number (213) 894-1301; email  
2 address ANNA.PARK @EEOC.GOV.

3 C. This Decree may be signed in counterparts. Facsimile signature shall  
4 have the same force and effect of an original signature or copy thereof.

5 **XI.**

6 **COSTS AND ATTORNEYS' FEES**

7 Each Party shall bear its own costs of suit and attorneys' fees. Defendants shall  
8 bear all costs associated with implementing this Decree including the hiring of the  
9 Consultants and the claims administration process.

10 The Parties agree to entry of this Decree and judgment subject to final approval  
11 by the Court. All Parties, through the undersigned, respectfully apply for and consent  
12 to the entry of this Consent Decree as an Order of this Court.

13 Respectfully Submitted,

14 U.S. EQUAL EMPLOYMENT  
15 OPPORTUNITY COMMISSION

16 Date: \_\_5/4/16

17 By: /s/ Anna Y. Park  
18 Anna Y. Park  
Attorneys for Plaintiff EEOC

HUNTON & WILLIAMS LLP

19 Date: \_5/4/16

20 By: /s/ Kevin J. White  
21 Kevin J. White  
22 Matthew I. Bobb  
Attorneys for Defendants  
LOWE'S COMPANIES, INC.  
LOWE'S HOME CENTERS, LLC.

23 I, Anna Y. Park, attest that all other signatories listed, and on whose behalf  
24 the filing is submitted, concur in the filing's content and have authorized its filing.  
25  
26  
27  
28

**[PROPOSED] ORDER**

**GOOD CAUSE APPEARING:**

The Court hereby finds that compliance with all provisions of the foregoing Decree is fair and adequate. The Court hereby retains jurisdiction for the term of the foregoing Consent Decree, and the provisions thereof are hereby approved.

**IT IS SO ORDERED.**

DATED: May 12, 2016



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**HONORABLE ANDRÉ BIROTTE JR.**  
**U.S. DISTRICT COURT JUDGE**