

JAMS
71 S. Wacker Dr., Suite 3090
Chicago, IL 60606

Acie Moore, Rodney McCullough,)
And Ronny Cunningham,)
individually and on behalf of all others)
similarly situated ,)
)
Claimants,)
)
-vs-)
)
Menard, Inc.,)
a Wisconsin Corporation d/b/a Menards,)
)
Respondent.)

Case No.: 11 160 02063 10

STIPULATION AND AGREEMENT TO SETTLE CLASS ACTION

This Stipulation and Agreement to Settle Class Action (“Agreement” or “Settlement Agreement”) is entered into on this _____ day of October 2011 by, between, and among Menard, Inc. (“Menard”) and Acie Moore, Rodney McCullough and Ronny Cunningham (collectively “Class Representatives”), and the individuals defined below as “Class Members.” Class Representatives, the Class Members, and Menard may be referred to collectively as “the Parties.”

I.
BACKGROUND

1. Class Representatives filed a complaint in arbitration on October 22, 2010, seeking recovery of money damages and equitable relief on behalf of themselves and certain other African American persons who are current or former employees of Menard whom Class Representatives allege have been subjected to the acts and omissions alleged in Class Representatives’ Complaint entitled Acie Moore et al. v. Menard Inc., d/b/a Menards, AAA # 11 160 2063 10 (“Action”).
2. Class Representatives have previously filed class action administrative complaints with the EEOC titled Reggie Watson et al. v. Menard Inc. d/b/a Menards, EEOC # 210-2005-01574 (Acie Moore); 210-2005-00768 (Rodney McCullough); 210-2004-07155 (Ronny Cunningham).
3. Class Representatives allege that Menard discriminated against them and other similarly situated full-time African-American employees with regard to opportunities for promotion into Covered Management Positions at Menard retail stores.

4. Class Representatives seek an award of money damages and injunctive relief on behalf of Class Members.
5. Menard has denied and continues to deny each and every allegation of wrongdoing and liability of any kind whatsoever that are asserted or could or should have been asserted in any court or arbitration, and asserts and alleges that, in fact and in law, there is nothing whatsoever improper, illegal, or in any way actionable about its actions.
6. The Parties have engaged in extensive investigation, discovery and subsequent mediation.
7. Class Representatives and Menard have agreed to enter into this Settlement Agreement in order to put to rest all disputes and controversy arising in any way from the facts and circumstances made the subject of this Action and to avoid the risks and uncertainties associated with such litigation and arbitration, as well as the substantial and significant cost, burden, and expense involved in the continuation of litigation and arbitration, with the express understanding and agreement that Menard in no way acknowledges or admits but, rather, expressly denies any wrongdoing, fault, or liability based in any way on the Class Representatives' allegations and contentions in the Action.
8. Based on the evaluation of the facts and law and a weighing of risks and benefits, Class Counsel have determined that the settlement set forth herein is fair and reasonable and in the best interests of the Class Representatives and of the Class Members.
9. That, for and in consideration of the mutual covenants and agreements set forth herein, this Settlement Agreement is entered into by and between (1) Menard; and (2) Class Representatives, for and on behalf of themselves and on behalf of the Class Members as further defined herein.
10. Subject to the preliminary and final approval by the Arbitrator, this Action shall be fully settled and compromised and all race-based promotion claims which may have accrued during the Class Period shall be released, discharged, and forever foreclosed with respect to Menard upon the terms and conditions set forth below.
11. Class Certification for Settlement Purposes. Solely for the purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing class certification have been met and are met and therefore, for the purpose of effectuating this Settlement Agreement, the Parties stipulate to class certification. If, for any reason, the Arbitrator does not grant final approval of the Settlement, the stipulation of class certification shall be void *ab initio*. Menard expressly reserves the right to oppose class certification should the Settlement not be finally approved by the Arbitrator. If this Settlement is not finally approved by the Arbitrator, neither this Agreement, nor any ancillary documents, shall be admitted or offered into evidence in the Action or any other legal proceeding of any kind for any purpose whatsoever.
12. Denial of Liability. Menard denies the claims and allegations asserted in the Action. Menard specifically denies any liability or wrongdoing of any kind associated with the claims and allegations asserted in the Action and Menard asserts that it has no liability for any of the

Class Representatives' or Class Members' claims under any statute, regulation, common law or equitable theory. Menard further asserts that, for any purpose other than settlement, the Action is not appropriate for class treatment.

13. Investigation of Proposed Settlement by Menard. Menard has investigated the allegations raised by the Class Representatives in the Action, evaluated the information elicited through its investigation, and concluded that, despite its good faith belief that it is not liable for any of the claims asserted in the Action and that it has good defenses to those claims, it will enter into this Settlement to obtain the conclusive and complete dismissal of the Action, and to avoid: (i) the further expense, inconvenience, and burden of this litigation, (ii) the distraction and diversion of its personnel and resources, and (iii) the risk of uncertainty of the outcome inherent in any litigation. Menard is willing to enter this Settlement Agreement as a means to resolve fully all claims related to the allegations in this Action.

14. Investigation of Proposed Settlement by Class Representatives. Class Representatives and Class Counsel have performed a thorough study of the law and facts relating to the claims asserted in the Action and have concluded, based upon their investigation and informal discovery, and taking into account the sharply contested issues, the expense and time necessary to pursue the Action through an appeal and further litigation, the risks and costs of further prosecution of the Action, the uncertainties of an appeal in complex litigation, and the substantial benefits to the Class, that a settlement with Menard on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Class. Class Representatives, on their own behalf and on behalf of each Class Member, have agreed to settle the Action on the terms set forth herein.

15. Full and Final Settlement. The Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims which exist between Menard and the Class Representatives and Class Members based on, arising out of, or directly related to the causes of action alleged in the Action. In order to achieve a full and complete release of Menard and its subsidiaries and affiliates as defined below of such disputes and claims, each Class Member (which includes any legal heirs and/or successors-in-interest of each Class Member), through execution of this Agreement by the Class Representatives, acknowledges that this Agreement includes in its effect all claims covered by the releases applicable to the Class, all as more fully defined in Section V below.

16. Settlement Documentation. This Settlement contemplates the (a) entry of an order preliminarily approving this Agreement; (b) entry of an order approving certification of a Settlement Class; (c) entry of an order appointing the Class Counsel, Class Representatives, and the Class Administrator; (d) entry of an order approving the Parties' Notice plan, set forth in Section IV below, and directing Notice; (e) entry of a Final Order and Award approving this Agreement; and (f) dismissal of the Action with prejudice.

II. DEFINITIONS

As used in this Agreement and its Exhibits, the following terms are defined as set forth below:

17. “Action” or “AAA Class Action Complaint” means the Class Action Complaint filed with the American Arbitration Association (AAA) pursuant to the AAA Employment Arbitration Rules and Procedures, *Moore et al. v. Menard Inc.*, AAA Case No. 11 160 2063 10 (referred to individually as the “Arbitration”) and the EEOC Administrative complaints referred to above for Moore, McCullough, and Cunningham.
18. “Agreement” or “Settlement Agreement” means this Agreement memorializing the Parties Settlement and release of Settled Claims.
19. “Arbitrator” means Attorney Deborah Haude or her designee.
20. “Authorized Claimant” means a Class Member who timely submits to the Class Administrator a properly completed Claim Form and is thereby authorized to receive a Settlement Payment.
21. “Claim Form” means that document attached hereto as Exhibit 2 which Class Members must properly complete and timely submit to the Class Administrator in order to receive Settlement Payments.
22. “Class Administrator” means Menard, Inc. who, in accordance with this Agreement and subject to approval by the Arbitrator, will give notice of Settlement to the Class and administer the claims process under this Agreement.
23. “Class Counsel” means the following counsel: Miriam N. Geraghty & Jeffrey L. Taren, Kinoy, Taren & Geraghty P.C. 224 S. Michigan Ave. Suite 300, Chicago, Illinois 60604.
24. “Class Member” means a member of the Class who does not exclude him or herself from participation in this Settlement.
25. “Class Period” means the period of time from January 1, 2004 through August 3, 2011.
26. “Class Representatives” means, Acie Moore, Rodney McCullough and Ronny Cunningham, in their individual capacities and as representatives of the Class.
27. “Covered Management Positions” means all assistant department managers whether first assistant or second assistant, all department managers, all assistant store managers, whether first or second assistant store manager, and all general store managers, who are or were employed at any Menard retail store and shall include front-end management positions as well as yard and receiving management positions.

28. "Enhancement Payments" means those payment amounts which shall not exceed a total of \$75,000.00 to be paid to the three Class Representatives from the Gross Settlement Amount for services provided to Class Counsel in this Action.
29. "Fairness Hearing" means the final settlement approval hearing to be conducted by the Arbitrator in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement in accordance with the applicable class action arbitration rules of AAA and other applicable law and procedure, after which the Arbitrator will issue the Final Order and Award.
30. "Final Order and Award" means the award to be entered by the Arbitrator, in such form as is mutually agreeable to the Parties, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Class Members, as well as Menard, in accordance with the applicable class action rules of AAA, Rule 23 of the Federal Rules of Civil Procedure and other applicable law, and making such other findings and determinations as the Arbitrator deems necessary and appropriate to effectuate the terms of this Agreement.
31. "Final Settlement" means when all of the following events have occurred: entry is made of a Final Order and Award, this Action has been dismissed with prejudice against all Class Representatives and Class Members who do not opt out of the settlement in accordance with this Agreement, and all appeal periods have concluded.
32. "Gross Settlement Amount" means the maximum settlement payment made by Menard to fund the settlement of this case, discussed further below.
33. "Menard" means Menard, Inc. and any and all subsidiaries, affiliates, and predecessors, insurers, successors, and assigns and all present and former officers, directors, employees, trustees, principals, agents, representatives, and attorneys, as well as any Person acting or purporting to act on behalf of Menard Inc.
34. "Net Settlement Amount" means the Gross Settlement Amount after being reduced by Enhancement Payments and Class Counsel fees and costs.
35. "Notice of Proposed Class Action Settlement" or "Notice" or "Class Notice" means the Arbitrator-approved notice to the Settlement Class advising of the proposed settlement.
36. "Opt-Out Period" means the period for members of the Settlement Class to file with the Class Administrator a statement that they wish to be excluded from this Settlement pursuant to Paragraph 56(a) of this Agreement.
37. "Parties" means Menard and the Class Representatives individually and on behalf of all Class Members.
38. "Person" means any individual or legal entity and its successors and assigns.

39. "Preliminary Approval" means the Arbitrator's preliminary approval of this Settlement Agreement, along with the Class Notice and Claim Form submitted as Exhibits 1 and 2 to this Agreement.

40. "Released Claim" means a claim under Title VII of the Civil Rights Act of 1964, as amended, under 42 U.S.C. § 1981, as amended and under all other federal, state or local law prohibiting race discrimination in employment promotion decisions that has been released, waived or settled by a Class Member prior to the signing of this Settlement Agreement, through the execution of a written Settlement Agreement that specifically released race discrimination in promotion claims.

41. "Settled Claims" means and includes any and all race-based promotion discrimination claims, causes of action, rights, demands, liabilities, and suits, whether made by or on behalf of a Class Member and whether arising under state, federal, or local law including, but not limited to, those arising under any state or federal discrimination law and any rules or regulations thereunder, and any claims in contract or tort, law or equity or otherwise, that have been alleged and asserted in the Action and/or that may arise out of or in connection with or resulting from any of the facts, matters, circumstances and/or transactions alleged in or made the subject of the Action.

42. "Settlement" means the final resolution of all disputes between Menard and the Class Representatives on their own behalf and on behalf of Class Members as set forth in this Settlement Agreement.

43. "Settlement Class" means all African Americans who were employed by Menard in a Covered Management Position during the Class Period for at least .5 work weeks.

44. "Settlement Payment" means the payment that an Authorized Claimant is entitled to receive in this Settlement.

45. "Subsidiaries, Affiliates, and Predecessors" means any and all present and former parent companies, predecessor companies, direct or indirect subsidiary companies, and affiliate companies, as well as any departments, divisions, and subdivisions of Menard, including but not limited to any and all present and former parent companies, predecessor companies, direct or indirect subsidiary companies, and affiliate companies, as well as departments, divisions, and subdivisions, and any and all insurers, successors, and assigns and all present and former officers, directors, employees, trustees, principals, agents, representatives, and attorneys of Menard.

III. TERMS OF SETTLEMENT

46. Consideration. In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree that the Action, and any claims, damages, or causes of action arising out of or related to the dispute that is the subject of the Action, whether asserted or not,

be settled and compromised as between the Class Members and Menard, subject to the terms and conditions set forth in this Settlement Agreement and the approval by the Arbitrator.

47. Effective Date. The Settlement embodied in this Agreement shall become effective (the "Effective Date") upon the later of: (a) the expiration of the time in which any appeal could be filed, if no appeal is timely filed; or (b) if an appeal is timely filed, the date on which all such appeals are fully decided and the Final Order, as modified (if at all), has been entered. The Effective Date is also conditioned upon all of the following occurring: (a) this Agreement has been signed by all Parties, Class Counsel and Menard's counsel; (b) the Arbitrator has entered a Preliminary Approval Order substantially similar to the Order for Preliminary Approval of Settlement submitted with the Agreed Motion for Preliminary Approval of Class Action Settlement; (c) the Arbitrator-approved Notice and Claim Form have been mailed to the Class as ordered by the Arbitrator in this Action; (d) less than 20% of the Class have excluded themselves from the Settlement; and (e) the Arbitrator has entered a Final Award and Order.

48. Settlement Payment Procedures.

a. The total and all-inclusive settlement sum shall be One Million Ninety Thousand Dollars (\$1,090,000) ("Gross Settlement Amount"). The Gross Settlement Amount shall remain in the possession, custody and control of Menard until settlement proceeds are needed for distribution as set forth herein. The Settlement Amount payable to the class out of this sum shall be Seven-hundred and twenty-six thousand six-hundred and sixty-seven dollars and no cents, (\$726,667.00) which includes any and all Enhancement Payments disbursements, or other fees and costs awarded by the Arbitrator to the Class in the amount of \$75,000.00 and Net Settlement Proceeds in the amount of \$651,667.00 to be paid to Class Members. In addition, Menard shall pay reasonable attorneys fees and costs to Class Counsel as approved by the Arbitrator, not to exceed Three-hundred and sixty-three thousand three-hundred and thirty-three dollars and no cents. (\$363,333.00). All American Arbitration Association and Arbitrator costs shall not be included in the Gross Settlement Amount, but will be paid separately by Menard.

i. Enhancement Payment. Subject to Arbitrator's approval, Menard has agreed to pay the Class Representatives an Enhancement Payment as compensation for their time, effort, and expenses incurred and expended in the prosecution of the Action. Said compensation shall be made from the Gross Settlement Amount and shall be made pursuant to Arbitrator's approval on application of the Class Representatives. Menard will not oppose an application for such compensation in an amount not to exceed seventy-five thousand dollars (\$75,000.00) in the aggregate for all the three Class Representatives. The Enhancement Payment shall be paid from the Gross Settlement Amount. Menard will report the Enhancement Payments on an IRS Form 1099 which it will provide to each Class Representative, through Class Counsel and to the pertinent tax and authorities as required by law. Class Representatives assume responsibility for paying all of the taxes, holding Menard and Class Counsel harmless and indemnifying Menard and Class Counsel for all taxes, interest, penalties, and costs, including attorneys' fees, incurred by Menard and Class Counsel by reason of any claims against Menard or Class Counsel arising from or relating to non-withholding of taxes from the Enhancement Payments.

ii. Class Administrator. The Parties have selected Menard to administer the Settlement and to act as the Class Administrator. Duties of the Class Administrator include, without limitation, mailing notices, performing address updates and verifications prior to the first mailing, as specified in Section III below, performing one skip trace on any returned mail, arranging for publication in area newspapers as set forth in Paragraph 53 below, calculating, processing and mailing to Authorized Claimants, settlement checks and appropriate tax forms (including W-2 and 1099's).

iii. Class Administrator Costs. Menard shall pay all costs of administering the Settlement, including mailing costs and newspaper publication costs.

iv. Attorneys' Fees and Litigation Costs. Subject to the Arbitrator's approval, Menard will not oppose a request by Class Counsel for attorneys' fees and costs to be paid by Menard in addition to the Enhancement Payment and settlement proceeds set forth above in subparagraph (a), not to exceed Three-hundred and sixty-three thousand three-hundred and thirty-three dollars and no cents. (\$363,333.00).

b. Net Settlement Amount and Settlement Payments. Settlement Payments shall be paid on a claims made basis to Class Members who submit timely and proper Claim Forms pursuant to the Arbitrator-approved claims procedure set forth in Paragraph 48(c) below and shall be determined as follow:

i. The Gross Settlement Amount shall be reduced by (i) the Arbitrator-approved Enhancement Payments, and (ii) the amount of the Arbitrator-approved attorneys' fees and costs. The amount of the Gross Settlement Amount remaining after these deductions will constitute the Net Settlement Amount.

ii. Settlement Payments shall be paid out of the Net Settlement Amount and shall be calculated as follows: After the Class Administrator has approved all timely claim forms, the Class Administrator shall determine, for each Authorized Claimant, the total number of workweeks that the Authorized Claimant was employed in one or more Covered Management Positions. For Authorized Claimants who were promoted to the position of General Manager, calculation of total workweeks will cease once the Authorized Claimant began employment in the General Manager position. The Class Administrator will sum all Authorized Claimants' workweeks and then calculate each Authorized Claimant's percentage of those total workweeks. This percentage will then be multiplied by the Net Settlement Amount to determine the Settlement Payment for each Authorized Claimant.

iii. The Class Administrator shall compute the Settlement Payment for each Authorized Claimant who timely completes and submits a valid, signed Claim Form pursuant to Paragraph 48(b)(ii) above. Each Settlement Payment will be separated into equal amounts for back wages and compensatory damages. The half of the Settlement Payment allocated to back wages shall be subject to all required payroll taxes and deductions (including federal income taxes, state income taxes, FICA and FUTA, and other state-specific statutory payroll deductions), as well as other required deductions (e.g., garnishments, tax liens, or child support). Menard will report this portion of the Settlement Payment on an IRS Form W-2, which it will provide to each

Authorized Claimant and to the pertinent taxing authorities as required by law. Each Authorized Claimant's share of FICA, Medicare, FUTA and other federal or state-specific statutory payroll deductions shall be deducted from his or her Settlement Payment. The half of the Settlement Payment allocated as compensatory damages shall be characterized as payment for alleged compensatory damages, but not wages. Menard will report this portion of the Settlement Payment on an IRS form 1099, which it will provide to each Authorized Claimant and to the pertinent taxing authorities as required by law. The Authorized Claimants shall be responsible for paying any taxes due on the compensatory damages portion of the Settlement Payments. The Authorized Claimants shall each hold Menard and Class Counsel harmless and indemnify Menard and Class Counsel for all taxes, interest, penalties, and costs, including attorneys' fees, incurred by Menard or Class Counsel by reason of any claim against any Menard or Class Counsel arising from or relating to the non-withholding of taxes with respect to each of them from the compensatory damages portion of the Settlement Payments.

iv. All Settlement Payments shall be deemed to be paid to each Authorized Claimant solely in the year in which such payments actually are received by the Authorized Claimant. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Authorized Claimant to additional compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Authorized Claimant to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of the Parties that the Settlement Payments provided for in this Agreement are the sole payments to be made to the Authorized Claimants (other than the Enhancement Payments made to the Class Representatives), and that Authorized Claimants, including the Class Representatives, are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

c. Claim Form.

i. The Class Administrator shall mail a Claim Form to each member of the Class in the form attached hereto as Exhibit 2.

ii. For a member of the Settlement Class to share in distributions from the Net Settlement Amount, he or she must not opt out of the Settlement pursuant to Paragraph 56(a), and must complete and return a Claim Form to the Class Administrator, within the time period specified in this Agreement, signed by the Class Member or his or her authorized representative, and certifying that he or she worked for Menard in a Covered Management Position during the Class Period and further certifying that the individual is African American. The Claim Form also will include: (1) a release of claims consistent with that set forth in Section V of this Agreement.

iii. If a Class Member disagrees with the number of workweeks set forth on his or her Claim Form, he or she must submit documentation with the Claim Form that supports his or her belief that he or she held a Covered Management Position for a different number of workweeks during the Class Period. The Class Administrator will review the documentation and make a

determination based upon the submitted documentation and Menard's records for that Class Member as to the validity of the Class Member's claim. If the Class Administrator needs further information concerning the Class Member's claim, the Class Administrator will notify Defense Counsel and Class Counsel and request the needed information. Menard's records will be presumed determinative if there is a dispute over the number of workweeks that the Class Member worked in a Covered Management Position during the Class Period. The Class Administrator will notify Class Counsel and Defense Counsel of any dispute by a Class Member regarding calculation of workweeks.

iv. The Claim Form must be postmarked and mailed to the Class Administrator no later than sixty (60) calendar days after the date the Class Administrator mails the blank Claim Forms to members of the Settlement Class. Any Claim Form that is returned to the Class Administrator and is postmarked more than sixty (60) calendar days after the date of mailing of the blank Claim Form shall be null and void and shall not be accepted or processed. Claim Forms with no or illegible postmarks will be considered untimely and rejected if they are received more than five (5) calendar days after the close of the sixty (60) day period for submitting claims. Unless otherwise agreed by the Parties, Claim Forms that are not timely mailed or received shall be rejected and disregarded.

d. Payment of Settlement Amounts.

i. Within ten calendar days after the close of the sixty (60) day period for submitting claims, the Class Administrator shall calculate the final Settlement Payment to be paid to each Authorized Claimant. The Class Administrator shall certify jointly to Class Counsel and Defense Counsel what claims were timely submitted and the amount of each claim to be paid. Menard shall thereafter cause the Settlement Payments to be mailed to the Authorized Claimants within ten days after the Effective Date of this Agreement. Menard also shall mail to Class Counsel Enhancement Payments for Class Representatives and Class Counsel's attorneys' fees and costs within ten days after the Effective Date.

ii. Class Representatives and Authorized Claimants will have one hundred eighty (180) calendar days from the date on which the Settlement Payments and Enhancement Payments are mailed to negotiate the Enhancement Payment and/or Settlement Payment checks. If any Class Representative or Authorized Claimants does not cash their check within the 180-day period, the checks will automatically be cancelled and voided through a stop-payment or other similar method of cancelation. Uncashed Settlement Payments and Enhancement Payments will become the property of Menard.

e. Submission of Deficient Claim Forms. If any Class Member timely submits a deficient Claim Form, then, within fifteen (15) calendar days of the Class Administrator's receipt of such Claim Form, the Class Administrator shall send by first class mail a notice to such Class Member informing him or her of the deficiency and that he or she has fifteen (15) calendar days from the date the notice is mailed to cure the deficiency. The Class Administrator will also copy (via email) Class Counsel and Defense Counsel with any such notices of deficiency. A response from the Class Member curing the deficiency must be in writing and must be postmarked and mailed within fifteen (15) calendar days after the date the notice of deficiency is mailed to the Class Member in order to be considered a timely response. Any responses that are not timely

shall not be considered, and the deficient Claim Form shall be null and void and shall not be accepted or processed. Missing or illegible postmarks will be handled as specified above in Paragraph 48(c)(iv).

f. Failure to Submit Claim Form. Any member of the Settlement Class who does not opt out of the Settlement pursuant to Paragraph 56(a) will be deemed eligible for a Settlement Payment hereunder, but will receive a Settlement Payment only if he/she timely submits a completed and executed Claim Form, in accordance with Paragraph 48(c) above. A member of the Settlement Class who fails to timely submit a valid and complete Claim Form to the Class Administrator and who also fails to file a Request for Exclusion from the shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Arbitrator's Final Order and Award. Any such Class Member will be subject to the release in Section V of this Agreement and the other rulings in this Action, but will not be permitted to recover from the Net Settlement Amount.

g. No Additional Contribution by Menard.

i. Menard's monetary obligation under this Agreement is limited to the amount defined as the Gross Settlement Amount, with the exception of the employer's portion of government-mandated withholdings for FICA, Medicare and FUTA, payment of Settlement Administration Costs, and payment of American Arbitration Association and Arbitrator costs and fees. Menard may not be called upon or required to contribute additional monies above the Gross Settlement Amount (with the above exceptions) under any circumstances whatsoever.

ii. In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified, in whole or in part, however that may occur, or the settlement of the Action is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by a court of competent jurisdiction, Menard shall cease to have any obligation to pay any portion of Gross Settlement Amount to anyone under the terms of this Agreement, and all previous distributions from the Gross Settlement Amount shall immediately be paid back to Menard by the person or entity who received such distribution.

h. Nullification. If twenty percent (20%) or more of the members of the Settlement Class timely submit Requests for Exclusion from the Settlement, then Menard, in its sole discretion, may nullify and void this Agreement. The Class Administrator shall provide to Class Counsel and Defense Counsel on a weekly basis copies of all Requests for Exclusion from the Settlement.

IV. NOTICE TO THE CLASS

49. Notice to members of the Settlement Class. A Notice as approved by the Arbitrator, shall be sent by the Class Administrator to members of the Settlement Class in accordance with the procedures below. A copy of the proposed Notice is attached hereto as Exhibit 1.

50. Upon Preliminary Approval and as the Arbitrator may direct, the Class Administrator shall cause the Notice, attached hereto as Exhibit 1, describing this proposed settlement and the Fairness Hearing to be provided to members of the Settlement Class.

51. The Parties shall provide the Class Notice by having the Class Administrator send the Notice by mail to those members of the Settlement Class who can be identified by Menard as set forth below. Prior to sending the Notice to members of the Settlement Class, Menard shall provide to Class Counsel for review a copy of the class list which shall include the names and workweek totals of all members of the Settlement Class.

52. The Notice, in the form submitted herewith and approved by the Arbitrator, shall, within ten days of the date on which the Arbitrator grants Preliminary Approval of the Settlement, be mailed by the Class Administrator, first-class postage prepaid, to each member of the Settlement Class. Prior to mailing said Notice, the Class Administrator shall utilize the services of National Change of Address (NCOA) database to correct any addresses as necessary. For any Notice returned for the first time with a new address provided by the postal service, the Class Administrator shall utilize the new address and mail the Notice a second time. For any Notice returned for the first time by the postal service without a new address provided by the postal service, the Class Administrator shall perform one skip trace to obtain a current address for the member of the Settlement Class in question and shall mail the Notice a second time within five (5) days of receiving the notice of invalid address. The Class Administrator shall thereafter have no further obligation to seek a current address. The Class Administrator shall provide to Class Counsel and Defense Counsel a list of the number of all members of the Settlement Class to whom a Notice was mailed.

53. Publication. Concurrent with the sending of the Notice, the Claims Administrator shall cause to be published in newspapers in each area where Defendant operates a store within Iowa, Illinois, Indiana, Michigan, Missouri, Minnesota, Kansas, North Dakota, Nebraska, Ohio, South Dakota, Wisconsin or Wyoming, an abbreviated Notice in substantially the form attached hereto as Exhibit 3. The list of newspapers where the abbreviated Notice shall be published is attached hereto as Exhibit 6. The abbreviated Notice shall be published for a consecutive two-week period in a reasonable size designed to be seen by potential class members, as determined by the Class Administrator. The Notice shall inform a member of the Settlement Class how to obtain a Claim Form.

54. No later than ten (10) calendar days prior to the Fairness Hearing, the Class Administrator shall provide Defense Counsel and Class Counsel with a Declaration attesting to completion of the Notice process, including due diligence, proof of mailing, and any attempts to obtain valid mailing addresses for, and the re-sending of, any returned Notices. This Declaration shall be provided by Class Counsel to the Arbitrator.

55. Class Counsel may include on their law firm website a copy of the Class Notice, Claim Form, Request for Exclusion Form and Preliminary Approval Order.

56. Responses to Notice.

a. Requests for Exclusion from Settlement.

i. Any member of the Settlement Class who receives a Notice may request to opt out, or be excluded from, the Settlement by mailing to the Class Administrator a written statement expressing the individual's desire to be excluded from the Settlement ("Request for Exclusion"). A Request for Exclusion Form is attached hereto as Exhibit 4. The Request for Exclusion must include the individual's name (and former name, if applicable), current address, Social Security number,. The Request for Exclusion must also state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN ACIE MOORE, ET AL.
V. MENARD, INC., ET AL., AMERICAN ARBITRATION CASE NO. 11 160 02063.
I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT,
I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT."

ii. Any such Request for Exclusion must be postmarked not more than forty-five (45) calendar days after the date the Notice is mailed to the Settlement Class. Requests for Exclusion that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Persons who are eligible to and do submit valid and timely Requests for Exclusion will not participate in the Settlement, nor will they be bound by the terms of the Settlement, if it is approved, by the Final Order and Award in this Action.

iii. Any member of the Settlement Class who fails to exclude him/herself from the Settlement pursuant to this Section, will become a Class Member and designate the Class Representatives as his/her representatives to make decisions on his/her behalf concerning his/her claims. Any member of the Settlement Class who fails to exclude him/herself from the Settlement will be deemed a participant whose rights and claims are determined by the terms of this Agreement, including the release provisions of this Agreement, as approved or modified by the Arbitrator. If a member of the Settlement Class timely submits both a valid Claim Form and a timely Request for Exclusion, the Claim Form will be considered valid, the Request for Exclusion shall be rejected, and the Class Member will be bound by the Settlement and the Arbitrator's Final Order and Award.

b. **Objections to Settlement.** Any Class Member wishing to object to the approval of this Settlement shall inform the Parties in writing of his or her intent to object to the Settlement. The written objection must be postmarked and mailed to Class Counsel and Defense Counsel within forty-five (45) calendar days after the date the Notice is mailed to the member of the Settlement Class, and must state the basis of the objection. If any Objecting Class Member wishes to be heard at the Fairness Hearing, that Class Member's written submission must include a request for the Arbitrator to consider that request. Any Class Member who fails to timely file and serve such a written statement of his or her intention to object shall be foreclosed from making any objection to this Settlement, unless otherwise ordered by the Arbitrator. Counsel for the Parties may file any response to the objections submitted by objecting Class Members at least fourteen (14) days before the date of the Fairness Hearing.

V. RELEASES

57. Release by the Class Representatives and the Class.

a. Upon the final approval by the Arbitrator of this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives and each Class Member who has not opted out of this Settlement in a timely manner, on their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and attorneys, fully and forever release and discharge Menard and its Subsidiaries, Affiliates and Predecessors (collectively, "Menard Releasees") from any and all complaints, claims, demands, rights, damages, losses, costs, expenses, obligations, liabilities, agreements, promises, actions, causes of action, and suits of any sort or nature whatsoever, known or unknown, contingent or fixed, suspected or unsuspected, at law or in equity, that the Class Representatives and Class Members may now have against Menard Releasees for any period up to and including the date of the Arbitrator's Final Order and Award relating to the claims of race discrimination in promotion of Class Representatives or Class Members during or following their employment with Menard.

b. Without limiting the generality of the foregoing, Class Representatives and the Class Members who have not opted out of this Settlement in a timely manner expressly release all claims, rights, or causes of action alleged in this Action and all race-based promotion claims, rights, or causes of action that could have been alleged, including, but not limited to, all claims, rights, or causes of action relating to race-based discrimination in promotion of Class Representatives or Class Members during or following their employment with Menard, including but not limited to claims under Title VII of the Federal Civil Rights Act of 1964 and all amendments thereto; claims under 42 U.S.C. § 1981 and all amendments thereto; claims under any other federal statute, regulation or federal constitutional provision prohibiting discrimination on the basis of race in promotions, and any state or local statute, regulation, ordinance or law prohibiting discrimination on the basis of race in promotions for the following states and all municipalities within those states: Iowa, Illinois, Indiana, Michigan, Missouri, Minnesota, Kansas, North Dakota, Nebraska, Ohio, South Dakota, Wisconsin or Wyoming, including all claims for compensation, penalties, liquidated damages, other damages, equitable relief, attorneys' fees and costs, any bonus or benefits. Class Representatives and Class Members are not waiving any rights that cannot legally be waived, including (i) any claims for unemployment compensation or workers' compensation benefits or (ii) any claims relating solely to the validity or enforceability of this Agreement. Subject to the foregoing, this Agreement shall operate as a general release of any and all race-based promotion claims to the fullest extent of applicable law.

c. Class Representatives and Class Members who have not submitted a valid Request for Exclusion forever agree that they, and each of them, shall not institute, nor accept any other relief from, any other suit, administrative claim, or other claim of any sort or nature whatsoever against Menard, relating to the claims being settled or released herein for any period up to and including the date of the Arbitrator's Final Order and Award.

d. Class Representatives, as a condition of receiving any Enhancement Payment, shall execute a separate Settlement Agreement and Release of Claims.

VI.

NON-MONETARY RELIEF

58. Menard understands and appreciates the importance of fairness in promotion opportunities for all of its employees, including its minority employees. Since 2004, when the

first Class Representative alleged race discrimination in employment in a Complaint filed with the United States Equal Employment Opportunity Commission, Menard has made a significant number of changes to its policies and practices in order to address concerns raised by employees as well as by the EEOC and to increase equal employment opportunity for African Americans in promotions to management level positions at both the department and store levels. A number of these modifications are outlined on Exhibit 5 to this Agreement. Menard remains committed to having in place a structure that allows for equal opportunity in promotion for all of its employees, including its African American Employees.

59. No Automatic Injunction. This Settlement Agreement shall not operate as an automatic injunction. Menard agrees to abide by applicable federal and state employment laws including Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. Furthermore, in lieu of an injunction, Menard will agree that the Arbitrator shall retain jurisdiction for two years after the Effective Date for purposes of enforcing this Settlement Agreement.

60. Headquarters Compliance Officer. Menard will designate its existing corporate Human Resources Manager, or his/her designee, as the Compliance Officer to perform certain duties under the Settlement Agreement. The Compliance Officer shall ensure Menard's implementation and compliance with the non-monetary provisions of the Settlement Agreement. The Compliance Officer's duties shall include:

a. Reviewing, implementing and monitoring changes to human resources and promotion policies at Menard to the extent necessary to comply with this Settlement Agreement;

b. Overseeing the development and/or implementation of training and education programs to be provided under the Settlement Agreement;

c. Working with the Store General Managers and Human Resource Coordinators and submitting progress reports to Class Counsel and coordinating the investigation of and resolution of complaints of alleged unlawful race discrimination submitted under Menard's internal complaint procedure.

61. Review of Human Resources Promotion Policies. Menard will review all of its current human resources policies relating to equal employment opportunity and promotion within 90 days of the Effective Date of this Agreement to ensure that they are consistent with legal requirements and good HR practice. A team comprised of minimally one Menard HR official and one attorney shall be responsible for the policy review ("Policy Review Committee"). Within six months of the Effective Date of this Agreement, Menard shall provide a report to Class Counsel detailing the results of the review, including recommendations, where appropriate, for modification to Menard employment policies and practices which may improve promotion opportunities for African American employees. Based on recommendations of the Policy Review Committee, Menard will modify its promotion policies and practices as necessary and will communicate such modifications to all Menard Team Members.

62. EEO and Diversity Training. Menard will provide training regarding equal employment opportunity to all Retail Store Department Manager and General Managers at Menard on an

annual basis during the term of the Settlement Agreement. Such training will include the following topics: (1) compliance with the Settlement Agreement; (2) equal opportunity employment; (3) federal, state, and Company prohibitions of unlawful race discrimination and retaliation; (4) diversity issues; and (5) other topics that will encourage equal opportunity in recruiting, hiring, assigning, promotion, and retention of employees, including its African American employees. This training will be provided at the annual training which Menard provides to its management level employees.

Within 90 days of the effective date of this Agreement, Menard will prepare a handout which will be provided to new managers upon receiving the annual training and will be added to the management orientation policy. This handout will outline EEO responsibilities and obligations in making employment decisions, including promotion decisions.

63. **Communicating Promotion Opportunities.** It is Menard's practice to make promotion decisions from within the Company, whenever possible. Accordingly, Menard appreciates it is important that all employees be aware of promotion opportunities so that they can apply for promotions for which they may have an interest. As part of the policy review described in Paragraph 61 above, Menard will review its policies and practices for communicating vacancies in management level positions to employees and will implement changes to improve notification to employees of such management level openings.

64. **Promotion Data.** The Parties, through their experts in this Action, have examined Menard promotion data, including time to promotion and expected number of promotions, given the make-up of the feeder pool for each management level position. The Parties acknowledge that a variety of factors influence promotion decisions, including but not limited to, an individual's work performance and disciplinary history, an individual employee's decision as to the final level of promotion they desire, and an individual employee's decision regarding willingness to relocate to take available management positions in geographic areas different from where the employee may then be residing. Menard agrees to maintain promotion data and to evaluate on an annual basis the time to promotion for African American and White employees and the number of promotions of African American and White employees, based upon the make-up of the feeder group for the following positions; Second Assistant Store Manager; First Assistant Store Manager; Store General Manager. Although Menard does not agree to any promotion quotas, if there appears to be a pattern of statistically significant differences in either time to promotion or number of promotions, Menard will review its promotion policies and practices and implement modifications as necessary to address any such pattern of differences.

65. **Internal Complaint Procedure.** Within ninety (90) days of the Effective Date of this Agreement, Menard will review its internal complaint process, including the appeal process, as part of the policy and practices reviewed to be conducted by the Policy Review Committee. Menard will implement those modifications to its internal complaint policy and procedure that are recommended by the Policy Review Committee. Menard will promptly investigate and resolve complaints by all Team Members contending they were not promoted because of their race (African American). Menard will document such complaints, complaint investigations, complaint resolutions and any appeals.

66. **Posting.** Menard will post its EEO policy and promotion policies, including any amendments thereto, in each retail store at a location on the Menard's intra-web site where employee policies are routinely posted. Such policies will remain posted for two years from the Effective Date of this Agreement. Menard will also post its internal complaint policy and any amendments thereto on the Menard's intra-web site in each retail store at a location where such notices are routinely posted and the internal complaint policy will remain posted for two years from the Effective Date of this Agreement.

67. **Reporting Obligations.** Menard shall, on a six month basis, beginning six months after the Effective Date of this Agreement, and for a period of a total twenty-four (24) months ("Reporting Period"), report in writing, as follows, to Class Counsel.

a. **Policies.** Menard will provide a detailed initial six month report regarding the Policy Review Committee's review of Menard's EEO and promotion policies and practices, including recommended changes to these policies and practices and implementation of the recommended changes. After the initial report, Menard will provide a semi-annual report to Class Counsel for the remainder of the Reporting Period regarding the monitoring of Menard's policies and practices relating to promotion and any and all recommended and implemented changes to these policies.

b. **Training and Education.** Menard will provide an initial six month report detailing the training and education to be provided to managers on those matters set forth in Paragraph 62 above. This initial report will include a training outline and drafts of curriculum materials to be used at Menard's annual manager training on the subject set forth in Paragraph 62. Menard will provide confirmation in the six month reports which immediately follow the annual training, that all managers at Menard retail stores have, in fact, received the required training. Menard will provide a copy of the EEO handout referenced in Paragraph 62 above to Class Counsel with the initial six month report. Following the initial six month report, Menard will provide a semi-annual report for the remainder of the Reporting Period detailing training and education of Menard managers as relates to equal employment opportunity and promotions.

c. **Promotion Decisions.** Menard will maintain data, at least throughout the two year reporting period, regarding all promotion decisions into Covered Management Positions at Menard retail stores. For each promotion decision at or above the Second Assistant General Manager level, data will include announcement of the opening, the race of those who applied for the position, and the race of the Team Member selected for the position. Commencing six months after the Effective Date of this Agreement and continuing at six month intervals for the remainder of the Reporting Period, Menard will provide to Class Counsel a report setting forth the information contained above for each covered promotion. This report will include data on time to promotions for African American and White Team Members and expected versus actual promotion of African American and White Team Members, as described in Paragraph 64 above.

d. **Internal Complaints.** Commencing six months after the Effective Date of this Agreement and continuing at six month intervals for the Reporting Period, Menard will provide a report to Class Counsel setting forth information related to internal complaints alleging racial discrimination in promotion decisions for African American Menard employees at Menard retail stores. The report will include a table of all complaints with the employee's identifying

information redacted, a summary of the complaint and resolution of each complaint, as well as documentation of any appeal and the resolution of any such appeal.

e. Posting. Commencing six months after the Effective Date of this Agreement and continuing at six month intervals for the Reporting Period, Menard through its Compliance Officer will certify in writing that Menard is in compliance with its posting obligations under this Agreement.

VII. PROCEDURES FOR ARBITRATOR APPROVAL

68. Duties of the Parties Prior to Preliminary Approval. The Parties shall promptly submit the Agreement to the Arbitrator and shall apply to the Arbitrator for the entry of an order substantially in the following form:

a. Scheduling a final approval hearing (“Fairness Hearing”) on the question of whether the Settlement, including payment of Class Counsel’s fees and costs and the Class Representatives’ Enhancement Payments, should be finally approved as fair, reasonable, and adequate as to the Class Members;

b. Approving as to form and content the proposed Notice;

c. Approving as to form and content the proposed Claim Form;

e. Approving as to form and content the proposed Request for Exclusion method;

f. Directing the mailing of the Notice to members of the Class by first class mail, publication of the Notice and providing the members of the Class an opportunity to submit a Request for Exclusion from the Settlement;

g. Preliminarily approving the Settlement, including the Enhancement Payments to be paid to the Class Representatives, and attorneys’ fees and costs to Class Counsel subject only to the objections of Class Members and final review by the Arbitrator;

h. Enjoining Class Representatives and all members of the Class from filing or prosecuting any claims, suits, or administrative proceedings regarding the claims released by the Settlement from the time Notice is mailed to the Class until such members of the Class have filed valid Requests for Exclusion with the Class Administrator.

69. Final Fairness and Approval Hearing. On the date set forth in the Order for Preliminary Approval and in the Notice, a Final Fairness Hearing shall be held before the Arbitrator (1) to review this Agreement and determine whether the Arbitrator should give it final approval; (2) to consider any timely objections made pursuant to Paragraph 56(b) above and all responses by the Parties to such objections; and (3) to issue a final ruling on Class Counsel’s application for an award of attorneys’ fees and costs under Federal Rule of Civil Procedure 23(h). At the Fairness Hearing, the Parties shall ask the Arbitrator to give final approval to this Agreement and shall

submit to the Arbitrator a proposed Final Order and Award which includes dismissal with prejudice, substantially in the following form:

a. Approving the Settlement, adjudging the terms to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Ruling on Class Counsel's application for an award of attorneys' fees and reimbursement of costs and expenses, which is unopposed by Menard provided the requested amount does not exceed 33 and 1/3 percent, which shall be paid out of the Gross Settlement Amount;

c. Approving the Enhancement Payments totaling no more than \$75,000.00 to the Class Representatives, which shall be paid out of the Gross Settlement Amount; and

d. Dismissing the Action with prejudice, and barring and permanently enjoining all Class Members from participating in any other lawsuit against Menard Releasees, or any of them, concerning the claims settled and released in the Action.

VIII.

LIMITATIONS ON USE OF THIS SETTLEMENT

70. **Public Statements.** Class Representatives, Class Counsel, Defense Counsel and Menard shall not hold any press conferences with respect to this matter at any time. Until the Parties jointly move the Arbitrator for preliminary approval of the Settlement, all Parties and Counsel will keep the terms of the Settlement and this Agreement confidential. The Parties shall agree upon the exact wording of a statement that any Party may issue as a press release to traditional news media outlets once the Arbitrator grants preliminary approval to the Settlement. Class Counsel may post the same statement to the website www.ktgllawyer.com. Other than any agreed press release, neither the Parties nor their counsel may initiate any contact with the media, and, if contacted by the media the Parties and their counsel shall make no disparaging statement about the opposing party.

71. **No Admission.** Nothing contained in this Agreement, nor the consummation of this Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Menard or any of Menard Releasees, or as establishing, supporting, or evidencing the existence or non-existence of any fact. The Parties have entered into this Agreement solely with the intention of avoiding further disputes and litigation and the attendant uncertainty, inconvenience and expense of such disputes and litigation.

IX.

MISCELLANEOUS PROVISIONS

72. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to execution of such documents and taking such other action as reasonably may be necessary or appropriate to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become

necessary by order of the Arbitrator, or otherwise, to effectuate this Settlement and the terms set forth herein.

73. Amendments. The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Parties, Class Counsel, and Defense Counsel who executed this Agreement and (b) approved by the Arbitrator.

74. Binding on Assigns. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

75. Entire Agreement. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings affecting the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action, whether oral or written and whether by a Party or such Party's counsel.

76. Signatories. It is agreed that because the number of Class Members is so numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all members of the Class of the binding nature of the releases recited herein, and the releases shall have the same force and effect as if this Agreement were executed by each Class Member.

77. Counterparts. This Agreement, and any amendments hereto, may be executed in two or more identical counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, which shall be binding upon and effective as to the Parties and each of them.

78. Captions and Interpretation. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital. Notwithstanding any rule of construction or interpretation to the contrary, this Agreement shall not be construed more strictly against one Party than against the other by virtue of it having been prepared or drafted primarily by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the content of this Agreement.

79. The Arbitrator. The Parties agree and will request that, except as provided herein, the Arbitrator retain exclusive and continuing jurisdiction over the Action, Parties, Class Members, Class Counsel, and Defense Counsel to interpret and enforce the terms, conditions, and obligations under this Agreement.

80. Notices: Any notices to be given to the parties under this Settlement Agreement will be deemed sufficient, and effective upon mailing, if sent by first-class mail to:

Counsel for Plaintiffs

Jeffrey L. Taren
Miriam N. Geraghty
Kinoy, Taren & Geraghty P.C.
224 S. Michigan Ave. Suite 300
Chicago, IL 60604
Tel: (312) 663-5210
Fax: (312) 663-6663
jtaren@ktglawyer.com

Counsel for Respondent
Michael J. Modl
Michael J. Westcott
Axley Brynelson, LLP
2 East Mifflin St.
Suite 200
Madison, WI 53703
800-368-5661
Fax: (608) 257-5444
mmodl@axley.com
mwestcott@axley.com

CLAIMANTS:

Acie Moore, Claimant

Dated

Rodney McCullough, Claimant

Dated

Ronny Cunningham, Claimant

Dated

MENARD, INC.

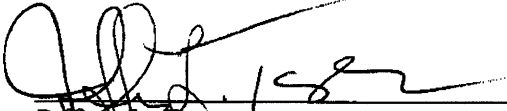
By: _____

Date

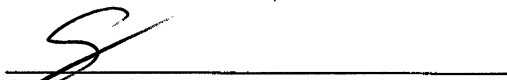
Print Name and Job Title

COUNSEL FOR CLAIMANTS
Kinoy, Taren & Geraghty P.C.

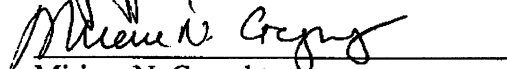
COUNSEL FOR RESPONDENT
Axley Brynerson, LLP



Jeffrey L. Taren



Saul C. Glazer



Miriam N. Geraghty

Dated: 10/5/11

Dated: 10/6/11

CLAIMANTS:

Acie Moore, Claimant

Dated

Rodney McCullough, Claimant

Dated

Ronny Cunningham, Claimant

Dated

MENARD, INC.

By: James Anderson

10/6/11
Date

James Anderson Corp. Legal Manager
Print Name and Job Title

COUNSEL FOR CLAIMANTS
Kinoy, Taren & Geraghty P.C.

Jeffrey L. Taren
Jeffrey L. Taren

Miriam N. Geraghty
Miriam N. Geraghty

Dated: 10/5/11

COUNSEL FOR RESPONDENT
Axley Brynson, LLP

Saul C. Glazer

Dated: _____

JAMS
71 S. Wacker Dr., Suite 3090
Chicago, IL 60606

Acie Moore, Rodney McCullough,)
And Ronny Cunningham,)
individually and on behalf of all others)
similarly situated ,)
Complainants,)

-vs-

) Case No.: 11 160 02063 10
)
)

Menard, Inc.,)
a Wisconsin Corporation d/b/a Menards,)
Respondent.)

**NOTICE OF CLASS ACTION DETERMINATION, CLASS DESCRIPTION,
PROPOSED SETTLEMENT, AND HEARING ON SETTLEMENT**

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

TO: All African-American managerial employees employed by Menard, Inc. in a retail store in the position of Assistant Department Manager or above from January 1, 2004 until August 3, 2011.

This Notice is being sent to you to advise you of the preliminary approval of the Settlement of an employment discrimination class action against your current or former employer, Menard, Inc. ("Menard"). Based on information in our records, you may be a Class Member who is entitled to receive a valuable benefit under the proposed Settlement in this case. In order to participate in the distribution of the settlement benefits, you should read this Notice carefully and you must submit timely the Claim Form enclosed with this Notice.

Claimants and Menard encourage all Class Members to participate in this Settlement. Participation does not change the settlement amount that Menard will pay, because Menard will set aside the fixed amount of \$651,667.00 regardless of the number of Menard employees who participate.

Unless you "opt out" of this Settlement by submitting the required form informing of your intention to exclude yourself, you will be bound by the Release in Section XIII, regardless of whether you submit a Claim Form or receive money.



Important Deadlines:

- Last day to submit a claim form to participate in the distribution of settlement benefits: _____ (postmarked, or received if sent other than by mail)
- Last day to submit written request for exclusion from settlement: _____ (postmarked, or received if sent other than by mail)
- Last day to object to the settlement: _____ (postmarked, or received if sent other than by mail)

I. INTRODUCTION

A proposed Settlement of the class action claims related to Menard, Inc.'s promotion practices raised in the above class action lawsuit has been reached by the Parties in this case and granted preliminary approval by Arbitrator Deborah Haude. This Notice informs you about the terms of that Settlement and about your rights and options under the Settlement.

The proposed settlement will resolve all claims involving allegations of race discrimination with regard to promotions into managerial positions that were made in this lawsuit. A hearing will be held on _____, at **10:00 a.m.**, before Arbitrator Deborah Haude at JAMS, 71 South Wacker Dr., Chicago, Illinois 60606 to address whether the proposed Settlement of claims against Menard Inc., d/b/a Menard, is fair and reasonable and should be approved. You should read this Notice very carefully because your rights may be affected by the Settlement. To participate in the distribution of the settlement benefits, you **must** submit a Claim Form by _____. **If you fail to mail in a Claim Form by that date, you will receive nothing from this lawsuit.**

If you do not opt out of the Settlement you will be bound by the terms of this Settlement, regardless of whether you make a claim or receive the benefits under the Settlement.

II. WHAT IS A CLASS ACTION?

A class action is a legal proceeding in which the claims and rights of many people are decided in a single proceeding. One or more representative plaintiffs, also known as "class representatives," file a complaint asserting claims on behalf of the entire class.

III. WHAT IS THE PURPOSE OF THIS NOTICE?

This Notice was sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the proposed Settlement and of your rights, including,

- To inform you of your right to submit a claim for a valuable monetary recovery under the Settlement;

- To inform you about the certification of a Settlement Class and to inform you that if you do not “opt out” of the Settlement you will be bound by the terms of the Settlement Agreement and release your right to sue Menard for claims involving allegations of race discrimination with regard to promotions into managerial positions;
- To inform you of your right to “opt out” of the Settlement, and not be bound by the Arbitrator’s Final Order and Award in this matter and the terms of the Settlement Agreement; and
- To inform you of your right to file objections to the Settlement.

IV. WHAT IS THIS CASE ABOUT?

Three former managerial employees of Menard filed a complaint with the American Arbitration Association (AAA), claiming that Menard had discriminated against them and other similarly situated Menard employees in violation of Title VII of the Civil Rights Act by delaying their promotions and/or failing to promote them into managerial positions of Assistant Department Manager and above because of their race. Menard denies all of the Claimants’ claims and has raised various factual and legal defenses to those claims, and has agreed to the Settlement without any admission of wrongdoing.

V. WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

The parties have agreed to settle this matter for the total sum of \$651,667.00 payable to Class Members who file timely claims. Menard will also pay the costs of settlement administration, arbitration, and the Claimants’ attorneys’ fees. In addition, during the course of this seven-year litigation Menard has made and has agreed to make substantial additional changes to its promotion and non-discrimination policies to ensure that race is not a factor with regard to promotion within Menard.

Distribution to the Class

If this Settlement is given final approval by the Arbitrator, the Settlement will result in Menard setting aside a total of \$651,667.00 to be distributed to Class Members. Class Members who timely file a completed Claim Form are eligible to receive a portion of the Settlement proceeds based upon the number of workweeks that the Class Member worked in a Covered Management Position. Settlement Payments to Class Members will be treated as one-half wages and one-half 1099 non-wage income. Class Members must cash checks for Settlement Payments within 180 days of the date of distribution.

Payments to Class Representatives

If the Arbitrator approves such payment, three of the Class Representatives will receive a monetary payment of \$25,000 each (for a total of \$75,000). These payments are made because since 2004, the Class Representatives provided many hours of service to the Settlement Class by

helping Class Counsel to formulate claims, by providing documents, and by providing declarations to support the case.

Payment of Attorneys' Fees and Costs

In addition, Menard will pay Class Counsel \$363,333.00 for attorneys' fees and costs. This amount will be paid for the time Class Counsel spent over the past seven years in pursuing this case on behalf of the Class Members, given the risks that Class Counsel took that no fees would be recovered, and given the result achieved for the Class Members. **Your individual recovery will not be reduced in any way by the amount of attorneys' fees and costs paid to Class Counsel.**

Non-Monetary Relief

In addition to the monetary relief described above, Menard, since the filing of the first class action charge with the EEOC in 2004, has made a number of changes to its equal employment opportunity policies and practices and agrees to additional non-monetary relief. Menard has agreed to appoint a corporate compliance officer whose duties will include:

- a. Reviewing, implementing and monitoring changes to human resources and promotion policies at Menard to the extent necessary to comply with this Settlement Agreement;
- b. Overseeing the development and/or implementation of training and education programs to be provided under the Settlement Agreement;
- c. Working with the Store General Managers and Human Resource Coordinators and submitting progress reports to Class Counsel and coordinating the investigation of and resolution of complaints of alleged unlawful race discrimination submitted in under Menard's internal complaint procedure.

Dismissal of Case and Release of Claims

In exchange for the distribution and payments set forth above, this Action will be dismissed with prejudice, and the Class Members will fully release and discharge Menard from any claims for damages or injunctive relief related to claims of race discrimination with regard to promotion, including claims for compensatory and punitive damages under federal, state or local laws or the common law of your State. When these claims are dismissed with prejudice, that means that the Arbitrator or Court will not consider the claims any further; the case is over. When claims are released, that means that no one covered by the release can sue Menard over those claims.

VI. ARE YOU A CLASS MEMBER FOR PURPOSES OF THE SETTLEMENT?

If you received this Notice in the mail and you are African-American, you are entitled to receive a portion of the benefit described in the section above entitled "**Distribution to the Class**" so long as you file timely a Claim Form. If you are not a listed Class Member, then you must show that you were hired by Menard and worked in a retail store between January 1, 2004, and August 3, 2011, and you were employed in any of the following positions: Second or First Assistant

Department Manager. Department Manager including Front End Managers, Second or First Assistant General Manager or General Manager.

VII. WHAT ARE YOUR OPTIONS?

You have several choices of what to do from here. In order to protect your rights, it is very important that you read this section carefully and that you submit the proper forms before the deadlines listed in this section or you may not receive any benefit under the Settlement.

File a Claim Form by _____: If you want to receive your portion of the settlement benefit, you must sign and mail (or deliver by hand) the attached Claim Form by _____. If you do not file a Claim Form by _____, you will receive nothing. Whether you choose to file a Claim Form or not you are bound by the terms of this Settlement, as noted in the “**Dismissal of Case and Release of Claims**” section above, unless you opt out of the Settlement Class. **If you choose to file a Claim Form, be sure to make a copy of the signed form for your records.**

If you choose to file a Claim Form but wish to challenge the number of workweeks on the Claim Form, you must submit your challenge and any supporting data by DATE.

Choosing Not to Join the Settlement: If you do not want to participate in the settlement and you want the right to pursue your own lawsuit, you must submit a Request for Exclusion Form by _____. If you do not opt out, you will be bound by the terms of this Settlement, regardless of whether you make a claim, file a Claim Form, or receive settlement benefits. To opt out, you must sign, date and return the enclosed OPT-OUT form no later than _____. Instructions on where to send the Forms are contained on the Forms.

Objecting to the Settlement: If you wish to object to the proposed Settlement, you may do so. Written objections must be postmarked by _____ and sent to: Jeffrey L. Taren, Kinoy, Taren & Geraghty P.C. 224 S. Michigan Ave., Suite 300, Chicago, IL 60604 and Michael Modl, Axley Brynelson, LLP, 2 East Mifflin, Suite 200, Madison, WI 53703.

You are not required to submit an objection.

VIII. HOW WILL MY SHARE BE CALCULATED IF I PARTICIPATE?

Each Class Member who timely submits a completed Claim Form will receive a share of the settlement fund of \$651,667.00. Your share will depend on the number of weeks you worked between January 1, 2004, and August 3, 2011 in a Covered Management Position. The settlement fund was calculated based on the wages that would have been paid to the estimated shortfall of African-American managers and the alleged wages lost to African-American managers whose promotions were delayed allegedly because of their race. This amount also takes into consideration the relative factual and legal defenses with regard to the claims of discrimination. Class Counsel determined the likelihood of success with regard to certification of the class and the probability of success on the merits of the claims.

Once all of the Claim Forms are returned, your share of the Settlement Proceeds will be determined based upon the above factors in relation to the other claimants. In general, the longer you were employed by Menard in Covered Management Positions, the higher your recovery will be. Your *pro rata* share of the settlement fund is dependent on the number of claims filed.

IX. WHO IS CLASS COUNSEL?

The Arbitrator has approved and appointed the following to represent all members of the class: Attorneys Jeffrey L. Taren and Miriam N. Geraghty, Kinoy, Taren & Geraghty P.C., 224 S. Michigan Ave., Suite 300, Chicago, Illinois 60604, Tel: (312) 663-5210.

X. WHO IS THE CLASS ADMINISTRATOR?

The Arbitrator has approved Menard as the Class Administrator for purposes of administering the settlement notice and claims process. The address for Class Administrator is: _____ Eau Claire, Wisconsin 54703.

XI. HEARING REGARDING THE SETTLEMENT

On _____, at 10:00 a.m. or as soon thereafter as practicable, Arbitrator Deborah Haude will hold a hearing for the purpose of determining whether the proposed Settlement and plan of distribution is fair, reasonable, and adequate and should be approved. The time and date of this hearing may be continued or adjourned. Any changes in the time, date and location will be posted on the Kinoy, Taren & Geraghty P.C. website at www.ktglawyer.com. Any person who wishes to attend the Fairness hearing must notify Class Counsel at the address shown in Section IX above on or before _____ of the names and addresses of all persons who will be attending. To be heard at the hearing, you must first have timely served an objection. The Hearing will be held at JAMS, 71 S. Wacker Dr. Suite 3090, Chicago, IL 60606.

XII. EXAMINATION OF PLEADINGS AND PAPERS/ADDITIONAL INFORMATION

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may contact Class Counsel, whose contact information is in Section IX above.

XIII. RELEASE OF ALL RACE BASED PROMOTION CLAIMS

The Parties have agreed to the settlement that is summarized in this Notice. The complete terms and conditions of the proposed Settlement are set forth in the Class Action Settlement Agreement, a copy of which can be obtained from Class Counsel. The Settlement provides that Class Members who do not opt out of this Settlement by excluding themselves as set forth above, will release all claims under federal, state or local law that they were denied promotions based upon race while employed with Menard, in a Covered Management Position during the Class Period. The exact terms of the release in the Settlement Agreement provide as follows:

a. Upon the final approval by the Arbitrator of this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives and each Class Member who has not opted out of this Settlement in a timely manner, on their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and attorneys, fully and forever release and discharge Menard and its Subsidiaries, Affiliates and Predecessors (collectively, "Menard Releasees") from any and all complaints, claims, demands, rights, damages, losses, costs, expenses, obligations, liabilities, agreements, promises, actions, causes of action, and suits of any sort or nature whatsoever, known or unknown, contingent or fixed, suspected or unsuspected, at law or in equity, that the Class Representatives and Class Members may now have against Menard Releasees for any period up to and including the date the Class Member signs the Claim Form relating to the claims of race discrimination in promotion as relates to Covered Management Positions during the Class Period during or following their employment with Menard. If Class Members do not timely submit a valid Claim Form, those Class Members will release all claims through the last day of the 60 day period for submitting Claim Forms.

b. Without limiting the generality of the foregoing, Class Representatives and the Class Members who have not opted out of this Settlement in a timely manner expressly release all claims, rights, or causes of action alleged in this Action and all race-based promotion claims, rights, or causes of action that could have been alleged, including, but not limited to, all claims, rights, or causes of action relating to race-based discrimination in promotion of Class Representatives or Class Members during or following their employment with Menard, including but not limited to claims under Title VII of the Federal Civil Rights Act of 1964 and all amendments thereto; claims under 42 U.S.C. § 1981 and all amendments thereto; claims under any other federal statute, regulation or federal constitutional provision prohibiting discrimination on the basis of race in promotions, and any state or local statute, regulation, ordinance or law prohibiting discrimination on the basis of race in promotions for the following states and all municipalities within those states: Iowa, Illinois, Indiana, Michigan, Missouri, Minnesota, Kansas, North Dakota, Nebraska, Ohio, South Dakota, Wisconsin or Wyoming, including all claims for compensation, penalties, liquidated damages, other damages, equitable relief, attorneys' fees and costs, any bonus or benefits. Class Representatives and Class Members are not waiving any rights that cannot legally be waived, including (i) any claims for unemployment compensation or workers' compensation benefits or (ii) any claims relating solely to the validity or enforceability of this Agreement. Subject to the foregoing, this Agreement shall operate as a general release of any and all race-based promotion claims to the fullest extent of applicable law.

c. Class Representatives and Class Members who have not submitted a valid Request for Exclusion forever agree that they, and each of them, shall not institute, nor accept any other relief from, any other suit, administrative claim, or other claim of any sort or nature whatsoever against Menard, relating to the claims being settled or released herein for any period up to and including either the date the Claimant signed a valid timely Claim Form or, if no valid timely Claim Form was submitted, the last day of the 60 day period for submitting Claim Forms.

XIV. ADDRESS CHANGES

It is your responsibility to inform the Class Administrator of your correct address. Please sign and mail any change of address along with your social security number, former address, and new address to the Class Administrator at the address listed in Section X, above.

XV. ADDITIONAL INFORMATION

If you have additional questions or seek additional information about the Settlement, you may contact Class Counsel: Attorneys Jeffrey L. Taren and Miriam N. Geraghty, Kinoy, Taren & Geraghty P.C., 224 S. Michigan Ave., Suite 300, Chicago, Illinois 60604, Tel: (312) 663-5210, E-mail: jtaren@ktglawyer.com and/or mgeraghty@ktglawyer.com.

Again, the important deadlines are:

- Last day to submit a claim form to participate in the distribution of settlement benefits: _____ (postmarked, or received if sent other than by mail)

- Last day to submit written request for exclusion from settlement: _____ (postmarked, or received if sent other than by mail)

- Last day to object to the settlement: _____ (postmarked, or received if sent other than by mail)

Dated: _____, 2011.

By Order of Deborah Haude
Arbitrator

PLEASE DO NOT TELEPHONE THE ARBITRATOR FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

JAMS
71 S. Wacker Dr., Suite 3090
Chicago, IL 60606

Acie Moore, Rodney McCullough,)
And Ronny Cunningham,)
individually and on behalf of all others)
similarly situated,)
)
Claimants,)
)
-vs-)
)
Menard, Inc.,)
a Wisconsin Corporation d/b/a Menards,)
)
Respondent.)

Case No.: 11 160 02063 10

SETTLEMENT CLAIM FORM AND RELEASE OF CLAIMS

TO PARTICPATE IN THIS SETTLEMENT AND TO RECEIVE A PORTION OF THE SETTLEMENT PROCEEDS, YOU MUST SIGN, DATE AND RETURN THIS FORM SO THAT IT IS POSTMARKED BY NO LATER THAN _____(date).

Claimant: John Doe
123 Main Street
City, State Zip Code

Number of weeks worked between January 1, 2004 and August 3, 2011 in a Covered Management Position: Filled in by Admin_____.

You are eligible for a cash payment if you are a Class Member and you did not opt out of the Settlement, and if you properly complete and return this Claim Form and Release of Claims. In order to be eligible to receive any portion of the Settlement funds, you **MUST** sign, date and return this form including the substitute IRS Form W-9 so that it is **postmarked on or before _____ (60 days from date of mailing).**

If your Settlement Claim Form and Release of Claims is not postmarked by _____(date), you will not be eligible to receive any portion of the Settlement funds. For more information on the Settlement and your rights, please see the attached Notice of Proposed Settlement Class Action.

By signing, dating and returning the Settlement Claim Form and Release of Claims, you are confirming that your race is African American, that you wish to participate in the Settlement, and that you are releasing those claims set forth below. This Settlement Claim Form and Release of Claims must be personally filled out by the current or former employee listed above or his or her legal representative who seeks to participate in this Settlement.



Be sure to make a copy of the signed Claim Form for your records. It is your responsibility to keep a current address on file with the Class Administrator. Please make sure to notify the Class Administrator of any change of address. The contact information for the Class Administrator is in Section X of the Notice and contained at the end of this Claim Form.

QUESTIONS

If you have any further questions with respect to this Settlement or about the Notice or this Claim Form, you may direct such questions to Class Counsel at Kinoy, Taren & Geraghty P.C., Telephone Number: (312) 663-5210. **You should not contact the Arbitrator.**

RELEASE OF ALL RACE- BASED PROMOTION CLAIMS

By signing this Settlement Claim Form and Release of Claims, you are acknowledging that you were employed by Menard, Inc. in a Covered Management Position as set forth in the Notice during the relevant Class Period as described in the Notice and that you are releasing any race-based claims that you may have against Menard relating to promotions in employment. The full language of the Release is set forth in the attached Notice.

By signing below, I acknowledge that I want to participate in the Settlement of this matter, that the information on this Claim Form is accurate and that I am releasing those claims set forth in the Release portion of the attached Notice.

Signature

Date

Return Claim Form to:
Class Administrator
P.O. Box 538
Eau Claire, WI 54702

JAMS
71 S. Wacker Dr., Suite 3090
Chicago, IL 60606

| | | |
|--|---|---------------------------|
| Acie Moore, Rodney McCullough, |) | |
| And Ronny Cunningham, |) | |
| individually and on behalf of all others |) | |
| similarly situated , |) | |
| Complainants, |) | |
| |) | |
| -vs- |) | Case No.: 11 160 02063 10 |
| |) | |
| Menard, Inc., |) | |
| a Wisconsin Corporation d/b/a Menards, |) | |
| Respondent. |) | |

**NOTICE OF CLASS ACTION DETERMINATION, CLASS DESCRIPTION,
PROPOSED SETTLEMENT, AND HEARING ON SETTLEMENT**

TO: All African-American managerial employees employed by Menards in a retail store in the position of an Assistant Department Manager or above from January 1, 2004 until August 3, 2011.

A proposed settlement of a class action arbitration of race-based promotion claims has been reached by the parties in this case and granted preliminary approval by Arbitrator Deborah Haude. If you worked in a management position in one of Menard, Inc.'s ("Menard") stores between January 1, 2004, and August 3, 2011, you may be entitled to receive money under this settlement. If you do not choose to Opt Out of the Settlement, you will be bound by the terms of this Settlement, regardless of whether you make a claim or receive money. For a complete copy of the Settlement Agreement, please contact Jeffrey L. Taren at Kinoy, Taren and Geraghty, P.C, at 312-663-5210 or visit their website at ktglawyer.com.

WHAT IS THIS CASE ABOUT?

Three former managerial employees of Menard filed a complaint with the American Arbitration Association (AAA), claiming that Menard discriminated against them and other similarly situated Menard employees in violation of Title VII of the Civil Rights Act by delaying their promotions and/or failing to promote them into managerial positions of Assistant Department Manager and above because of their race. Menard denies all of the Claimants' claims and has raised various factual and legal defenses to those claims, and has agreed to the Settlement without any admission of wrongdoing.



WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

The parties have agreed to settle this matter for the total sum of \$651,667.00 payable to Class Members who timely file completed Claim Forms. Menard will also paying the costs of settlement administration, arbitration, and the Claimants' attorneys' fees in the amount of \$363,333.00. In addition, during the course of this seven-year litigation Menard has made and has agreed to make substantial additional changes to its promotion and non-discrimination policies to ensure that race is not a factor with regard to promotion within Menards.

WHAT ARE YOUR OPTIONS?

File a Claim Form by _____: If you want to receive your portion of the settlement benefit, you must sign and mail (or deliver by hand) a Claim Form by _____. If you do not file a Claim Form by _____, you will receive nothing.

If you have not received a Claim Form, you should contact the Class Administrator at _____.

Choosing Not to Join the Settlement Class: If you do not want to be a member of the Settlement Class or participate in the settlement and you want the right to pursue your own lawsuit, you must opt out of the Settlement by _____. If you do not opt out, you will be bound by the terms of this Settlement, regardless of whether you make a claim, file a Claim Form, or receive settlement benefits. To opt out, you must sign, date and return the OPT-OUT form no later than _____. If you do not have an Opt Out Form, contact the Class administrator at _____.

Objecting to the Settlement: If you wish to object to the proposed Settlement, you may do so. Written objections must be postmarked by _____ and sent to: Jeffrey L. Taren, Kinoy, Taren & Geraghty P.C. 224 S. Michigan Ave., Suite 300, Chicago, IL 60604 and Michael Modl, Axley Brynelson, LLP, 2 East Mifflin, Suite 200, Madison, WI 53703.

HEARING REGARDING THE SETTLEMENT.

On _____, at 10:00 a.m. or as soon thereafter as practicable, Arbitrator Deborah Haude will hold a hearing for the purpose of determining whether the proposed Settlement and plan of distribution is fair, reasonable, and adequate and should be approved. The time and date of this hearing may be continued or adjourned. Any changes in the time, date and location will be posted on the Kinoy, Taren & Geraghty P.C. website at www.ktglawyer.com. Any person who wishes to attend the Fairness Hearing must notify Class Counsel at the address shown on or before _____ of the names and addresses of all persons who will be attending. To be heard at the hearing, you must first have timely served an objection. The hearing will be held at JAMS, 71 S. Wacker Dr. Suite 3090, Chicago, IL 60606, IL 60606.

JAMS
71 S. Wacker Dr., Suite 3090
Chicago, IL 60606

Acie Moore, Rodney McCullough,)
And Ronny Cunningham,)
individually and on behalf of all others)
similarly situated ,)

Claimants,)

-vs-)

Case No.: 11 160 02063 10

Menard, Inc.,)
a Wisconsin Corporation d/b/a Menards,)
Respondent.)

**IF YOU SIGN AND RETURN THIS FORM, YOU WILL NOT RECEIVE A
MONETARY PAYMENT FROM THIS SETTLEMENT.**

OPT OUT FORM

Claimant: Name: _____
Social Security # _____
Address: _____

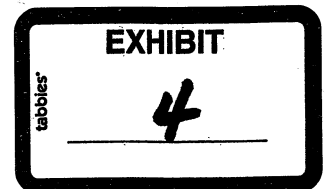
I wish to be excluded from the Settlement in Acie Moore, et al. v. Menard, Inc., American Arbitration Case No. 11 160 02063. I understand that if I ask to be excluded from the Settlement, I will not receive any money from the Settlement.

Signature

Date

Return this Form to: M.C.C.
P.O. Box 538
Eau Claire, Wisconsin 54702-0538

RETURN ONE FORM ONLY



| Date | Type of Enhancement | Summary | Accomplishments |
|-------------------------------|--|--|---|
| 06/01/2004 (approximately) | Stopped taking photographs of interviewees after briefly doing so. | An Operations Human Resource Advisor visited a site and took photographs of interviewees. This practice stopped shortly after it began and before it could become a wide-spread, regular practice. | Demonstrates that Menard, Inc. is watching for potential discriminatory effects in its operations and takes preventative measures when such practices are recognized. |
| 11/22/2004 | Human Resource Coordinator Seminar | All Human Resource Coordinators attend this two-day event at the Menard, Inc. General Office. Seminars are held annually. | The seminars are designed to give HRCs ongoing training that will develop skills, increase knowledge, and train on job the responsibilities. HRCs both listen to speakers address certain topics and actively participate in scenarios. Discrimination is one of many topics discussed. |
| 09/07/2005 | Policy #171 - Manager Trainee Program (revised) | A full-time Team Member that does not qualify to be a Manager Trainee can also be enrolled under certain conditions. | Opens pool of applicants to include non-college graduates |
| 09/29/2005 | Policy #104 - Counseling Team Members (revised) | Added that HR Coordinators should witness Counseling meeting and sign the form. | Adds an impartial witness. Aids in investigation and prevents discrimination against Team Members. |
| 03/31/2006 | Policy #31 - Equal Employment Opportunity (revised) | Expanded language to include the following sections: non-discrimination, sexual harassment, anti-retaliation, and the complaint and investigative procedure | Training aid for Team Members regarding discrimination and related topics. |
| 05/16/2006 | Policy #192 - New Team Member Follow-up Policy Update (revised) | Updated Agenda | Uniform set of questions which promotes compliance with laws and prevents unauthorized lines of questions. |
| 07/18/2006 | Policy #194 - Hiring Process (revised) | Replaced the term "pre-screening interview" with "Application Review." Updated the Applicant Review Checklist - Attachment A | |
| 08/01/2006 | Policy #193A - Weekly Manager Meeting (revised) | Sample agenda for weekly meetings attached. | Discussion topics include upcoming hiring needs, open management positions; encourages Team Members to move forward in their career. |

| | | | |
|-------------------------------|---|--|--|
| 08/01/2006 (approximately) | Career Tracking Program Implemented | Career Tracker is a web-based application which allows HR to search for Team Members based on current location, position, or educational information. The HRC can also search for Team Members based on their divisional or regional interests. The HR can view a Team Member's; position history, education information, training history, 9-block history, internal interview history. | Provides access to an internal applicant database and allows TM's who have special skills and education to transfer to positions which utilize those skills and education. |
| 01/08/2007 | Policy #211- Preparing for Advancement Course (revised) | Updated attachments to make them easier to print | |
| 01/08/2007 | Policy #210 - Management Orientation (revised) | Updated the Legal Matters Training and Communicating with your Merchandising Department | Additional training regarding legal matters |
| 03/09/2007 | Policy #174 - Operations Store Advisor (New Policy implemented) | Gives Assistant General Managers the chance to work with Operations and Merchandising support staffs prior to becoming a General Manager. Sets out qualifications, job duties, and instructions for applying. | One method for advancement into a General Manager position. |
| 5/23/2007 | Policy #171 (revised) | Term "Promotable lists" removed | |
| 06/28/2007 | WI Dells EEOC seminar | Rob Geske, Corporate Legal Manager, Purnita Howlader, Corp. HR Manager, and Lisa Wagner attended. | Training for managers |
| 9/5/2007 | Chicago Diversity Fair | Lisa Wagner attended | Training for Managers/57 MT candidates were interviewed. |

| | | | |
|------------|---|---|--|
| 9/12/2007 | Fort Wayne South received an NAACP Corporate award | | Menard, Inc. Fort Wayne South was recognized for outstanding contribution to the community. |
| 12/18/2007 | Unknown Event | | EEOC mediator Brian Ntukogu complimented Menard Inc.'s ability to work together as a team. |
| 1/22/2008 | Policy and Procedure #226 implemented. | Sets out minimum objective requirements for Managerial Positions and consolidates training programs. | Criteria prevents managers from subjective choices for promotions. |
| 03/14/2008 | Policy #226 (update) | GM Development Program is no longer a requirement to becoming a GM | Opens up pool of applicants |
| 12/19/2008 | Ability to apply directly to a store at Menards.com for various positions. | Easier to apply and HR Coordinators are encouraged to see if there are positions open at nearby stores. | Intended to ensure stores get the largest applicant pool possible. |
| 5/1/2009 | New application issued. | States "regardless of your education or background, we have a wide variety of positions available throughout the company" and "we are an Equal Opportunity Employer." | |
| 08/21/2009 | Posting on Bulletin Board advocates posting Career Opportunities as a way to generate interest in management openings in your stores. | | Reminder to HR Coordinators to post each management opening available in the stores to get the largest pool of applicants. |
| 11/16/2010 | Phasing out mini-applications to only use standard applications. | | A complete application becomes a better source for a more accurate interview, job reference check, and will help in the decision making process. |
| 11/22/2010 | Policy #66 - Orientation for New Team Members for All States (revised) | Added Equal Employment Opportunity Training for Human Resource Coordinators and Equal Employment Opportunity Training | Additional training for Human Resource Coordinators |