

**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 PRELIMINARY 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 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: **April 23, 2012** (postmarked, or received if sent other than by mail)
- Last day to submit written request for exclusion from settlement: **April 9, 2012** (postmarked, or received if sent other than by mail)
- Last day to object to the settlement: **April 9, 2012** 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 **June 6, 2012 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 **April 23, 2012**. **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 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 April 23, 2012:** 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 **April 23, 2012**. If you do not file a Claim Form by **April 23, 2012**, 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 **April 9, 2012**. 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 **April 9, 2012**. Instructions on where to send the Forms are contained on the Forms. **If you submit both a Claim Form and a Request for Exclusion, the Claim Form will be considered valid, the Request for Exclusion will be rejected and you will be bound by the Settlement and Arbitrator’s Final Order and Award.**

**Objecting to the Settlement:** If you wish to object to the proposed Settlement, you may do so. Written objections must be postmarked by **April 9, 2012** and sent to: Jeffrey L. Taren, Kinoy, Taren & Geraghty P.C. 224 S. Michigan Ave., Suite 300, Chicago, IL 60604 and Michael Modl, Axley Brynson, 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 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: Payroll Manager, P.O. Box 538, Eau Claire, Wisconsin 54703.

#### **XI. HEARING REGARDING THE SETTLEMENT**

On **June 6, 2012**, 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](http://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 **April 9, 2012** 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 OPositions 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](mailto:jtaren@ktglawyer.com) and/or [mgeraghty@ktglawyer.com](mailto:mgeraghty@ktglawyer.com).

Again, the important deadlines are:

- Last day to submit a claim form to participate in the distribution of settlement benefits: **April 23, 2012** (postmarked, or received if sent other than by mail)
- Last day to submit written request for exclusion from settlement: **April 9, 2012** (postmarked, or received if sent other than by mail)
- Last day to object to the settlement: **April 9, 2012** (postmarked, or received if sent other than by mail)

Dated: February 23, 2012.

By Order of Deborah Haude  
Arbitrator

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