

DeSoto, et al. v. Sears, Roebuck and Co. was filed in Alameda County Superior Court in California by two California Technicians claiming violations of various provisions of the California Labor Code and California Business and Professions Code. On September 24, 2004, the Court certified a class of approximately 2,100 California-based Technicians.

Caiarelli, et al. v. Sears, Roebuck and Co. et al., was filed in Pennsylvania State Court by 23 Pittsburgh area Technicians alleging violations of Pennsylvania wage and hour law and seeking the certification of a class of all Pennsylvania Technicians.

Winter, et al. v. Sears, Roebuck and Co., No. 05-2-33313-8MCH (Superior Court of King County, Washington), was filed on October 7, 2005 by four Seattle area technicians alleging violations of Washington wage and hour law and seeking certification of a class of all Washington technicians.

All four lawsuits make essentially the same claims, namely that Sears' HDP violates federal and state wage and hour laws by: (1) failing to compensate Technicians for the morning and evening commutes from home to the first customer of the day and back home from the last customer of the day, respectively; (2) requiring or permitting Technicians to perform uncompensated "off the clock" work at home and elsewhere; and (3) failing to pay Technicians for all work performed in excess of 40 hours in a workweek at the applicable overtime rate.

Plaintiffs and Sears engaged in settlement discussions before a neutral third party mediator, over the course of several months and multiple in-person sessions. As a result of these discussions, the parties reached an agreement to settle the claims raised by Plaintiffs for a settlement fund of \$15 million (to be distributed as explained below). The estimated total payout to the three classes from this fund is approximately \$10,000,000, depending on the level of participation by class members.

Class Counsel believe that further proceedings in this case against Sears, including trial and probably appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, ultimately would be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the proposed settlement with Sears is fair, reasonable, and adequate.

The settlement will settle and compromise all claims in the *Lenahan, DeSoto, Caiarelli* and *Winter* lawsuits and all related claims regarding the operation of the HDP.

The plaintiffs and Sears have entered into a Joint Stipulation of Settlement, which has been given preliminary approval by the Court on November 10, 2005 ("Preliminary Approval Order"). The Joint Stipulation of Settlement provides for settlement payments to three different groups of current and former Technicians:

- (1) Class One (State Law Class for California, New Jersey, Pennsylvania and Washington State Law Claims): All persons who were, are, or will be employed by Sears as Repair Associates and participated in the HDP as In-Home Service Technicians in the States of New Jersey, California, Pennsylvania and Washington during the period from the commencement of the HDP through the date of the Preliminary Approval Order;

- (2) Class Two (State Law Class For Other State Law Claims): All persons who were, are, or will be employed by Sears as Repair Associates and participated in the HDP as In-Home Service Technicians in the following states, during the period from the commencement of the HDP through the date of the Preliminary Approval Order: Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming;
- (3) Class Three (FLSA claims): All persons who are not members of Class One or Class Two and who were, are or will be employed and participated in the HDP as In-Home Service Technicians during the period November 10, 2002 through November 10, 2005, or whose employment terminated but who filed a Consent to Join in *Lenahan et al. v. Sears, Roebuck and Co.* prior to November 10, 2002.

The Stipulation of Settlement affords each class different rights and benefits. Please review the Summary of Settlement below to understand how your class will benefit and be affected by the Settlement. However, if you have already submitted a “Consent to Join” Form to Class Counsel, your need not submit a Claim Form also.

II. SUMMARY OF THE SETTLEMENT

A. Settlement Payments

In consideration for settlement and a release of all claims of the Settlement Classes against Sears, Sears agrees to make payments to the class members of Classes One, Two and Three who timely sign and return duly executed Claim (“Eligible Class Members”), Waiver, Release and Consent to Join Forms (“Claim Form”).

The Settlement Administrator shall first calculate the total number of compensable work weeks for each Eligible Class Member from the beginning of the HDP to the date of the Preliminary Approval Hearing (“Individual Eligible Class Member Work Weeks”). In making the calculations, the Settlement Administrator shall assume that one year of employment is equal to 50 work weeks. Shorter periods of employment shall be proportionately calculated. Any periods of time spent on a leave of absence do not count as weeks worked. Any periods of time worked that are less than a full week (i.e., a part of any week) will be considered a full week. The calculation of the Individual Eligible Class Member Work Weeks shall be as follows:

Each week for each Eligible Class Member in Class One shall be weighted at 1.5 compensable workweek under the formula.

Each week for each Eligible Class Member not in Class One shall be weighted at 1.0 compensable workweek under the formula.

The state in which a Technician participated in the HDP is determined by the Technician’s home residence. If an Eligible Class Member participated in the HDP in both Class One and non-Class One states at different times, then the weeks of participation in a Class One state will be weighted at 1.5 compensable workweek and the weeks of participation in a non-Class One state will be weighted at 1.0 compensable workweek.

After calculating the Individual Eligible Class Member Work Weeks, the total number of compensable workweeks for the Class shall then be calculated by adding together the Individual Eligible Class Member Work Weeks for all Eligible Class Members (“Total Eligible Class Members Work Weeks”).

After calculating the Total Eligible Class Members Work Weeks, the dollars payable per compensable work week will then be calculated by dividing the Total Eligible Class Members Work Weeks into the net settlement amount (gross settlement fund amount less attorney fees and costs, costs of settlement administration, named plaintiff incentive awards, and funds set aside for late and disputed claims). The dollars payable per compensable work week will then be multiplied by the number of Individual Eligible Class Member Work Weeks worked by each Eligible Class Member. This will be the settlement payment amount for an individual class member, and will be paid from the net settlement amount.

B. Non-Monetary Relief

Within thirty days of the entry of the final order approving the settlement and dismissing the claims covered by this lawsuit, Sears will distribute an election form to all incumbent Technicians allowing each to designate whether he or she agrees to participate in the HDP under the terms and conditions specified on the form.

C. Eligible Class Member

You will be considered an Eligible Class Member only if you sign and return the attached Claim Form to the address below postmarked on or before March 16, 2006 or have already submitted a “Consent to Join” Form to Class Counsel. Your portion of the settlement fund will be determined based on the number of weeks you worked as an In-Home Service Technician and participated in the HDP as explained above in Section II.A.

D. Release

The Settlement Agreement between Plaintiffs and Sears contains a release. This provision releases Sears Holdings Corporation and its consolidated subsidiaries, including without limitation, Sears, Roebuck and Co. and Kmart Holding Corporation, and their present and former successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, insurers, attorneys and employees from any and all New Jersey, California, Pennsylvania, Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Dakota, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming state and/or federal law claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, actions or causes of action whatever kind or nature, whether known or unknown, arising out of or related to this action as of the date of final approval of the settlement by the Court (see below). Any member of Classes One and Two who does not submit a timely request to be excluded from this settlement, as specified below, will be bound by the release, whether or not he/she submits a Claim Form and participates in the recovery made available to Eligible Class Members by this settlement. Members of Class Three will only be bound by the release if they submit a timely Claim Form indicating their consent to join or if they have already submitted a “Consent to Join” Form to Class Counsel.

This release includes any rights or benefits an Eligible Class Member may have under California Civil Code Section 1542 with respect to the claims described above. Section 1542 provides:

“A general release does not extend to claims which the creditor [employee] does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor [employer].”

If you are a member of Classes One and Two and do not exclude yourself from the settlement class (see below at III.C.), you will also be releasing your right to sue under the Fair Labor Standards Act of 1938, 29 U.S.C. §216(b).

As a condition of receipt of any money provided for in the Settlement Agreement, each member of the Settlement Classes also agrees not to initiate any legal action against Sears for any and all claims arising out of or related to this action, under state or federal law.

E. Payments to Class Representatives

The four Class Representatives, who took a lead role in this litigation and assisted in its resolution, will receive \$2,500 each (\$10,000.00 total) for their time and effort in representing the class in this litigation. In addition, any of the plaintiffs in the *Caiarelli* and *Winter* actions who decline to opt out of this settlement will also be entitled to a \$2,500.00 incentive award (for a maximum possible total of \$72,500).

F. Attorneys' Fees

The settlement permits Class Counsel to apply to the Court for payment of up to 30% of the Gross Settlement Fund in fees plus costs incurred in connection with the prosecution and settlement of the claims subject to the Settlement Agreement. The Court will make a determination on the reasonableness of this application at a later date.

G. Disposition of Undistributed Funds

Settlement funds not paid out to settle claims shall be distributed to a charitable organization approved by the Court or otherwise as directed by the Court.

III. YOUR RIGHTS AND OBLIGATIONS AS AN ELIGIBLE CLASS MEMBER

A. Submitting a Claim

Anyone who wishes to submit a claim, and who has not already submitted a “Consent to Join” Form to Class Counsel, must *complete* and *sign* the Claim Form and *return* it, via U.S. Mail, to:

Sears Settlement Administrator
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Phone (866) 742-4955

Your Claim Form must be postmarked no later than March 16, 2006. If the Claim Form is sent from within the United States it must be sent through the United States Postal Service via First Class U.S. Mail or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Claim Form. If you lose, misplace, or need another Claim Form, in addition to contacting the Class Counsel listed below, you may download this form at: www.rg2claims.com.

B. Required Opt-In – Class Three

Any member of Class Three, as defined above in Section I.A, who has not previously submitted a “Consent to Join” Form to Class Counsel must *complete, sign, and return* the Claim Form in order to participate in the settlement. Unlike the members of Classes One and Two, members of Class Three must “opt in” in order to participate in the settlement. By returning a signed and completed Claim Form, members of Class Three can consent to join the *Lenahan* lawsuit and participate in the settlement. Any member of Class Three who has not already submitted a Consent to Join in the *Lenahan* action or who does not timely opt into the settlement shall not be a member of the settlement class, shall be barred from participating in any portion of the settlement, and shall receive no benefits from the settlement. Any such person, at his or her own expense, may thereafter pursue any claims he/she may have against Sears.

C. Excluding Yourself from the Settlement – Classes One and Two

Any member of Classes One and Two, as defined above in Section I.A, who does not wish to participate in the settlement may exclude himself or herself (i.e., “opt out”) by sending a request in writing to the address listed below. The request for exclusion must be signed, dated, and returned by First Class U.S. Mail, or the equivalent, to:

Sears Settlement Administrator
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Phone (866) 742-4955

The request for exclusion must be postmarked no later than March 16, 2006. If the request for exclusion is sent from within the United States it must be sent through the United States Postal Service via First Class U.S. Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request for exclusion.

Any person who files a complete and timely written request for exclusion shall, upon receipt, no longer be a member of the settlement class, shall be barred from participating in any portion of the settlement, and shall receive no benefits from the settlement. Any such person, at his or her own expense, may thereafter pursue any claims he/she may have against Sears. All members of Classes One and Two who fail to timely file requests for exclusion shall be bound by the settlement.

DO NOT SUBMIT BOTH THE CLAIM FORM AND A REQUEST FOR EXCLUSION. IF YOU SUBMIT BOTH, THE REQUEST FOR EXCLUSION WILL BE INVALID, YOU WILL BE INCLUDED IN THE SETTLEMENT CLASS, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT.

D. Objection to Settlement

You can object to the terms of the settlement before final approval. However, if the Court rejects your objection, you will still be bound by the terms of the settlement unless you have submitted a valid and timely request for exclusion. To object, you must file a *written objection* and a notice of intention to appear at the Final Approval hearing currently set for May 12, 2006, at 10:00 a.m. at the U.S. Courthouse at 402 East State Street, Trenton, New Jersey, and send copies to the following:

CLASS COUNSEL
Linda M. Fong
Kaplan Fox & Kilsheimer LLP
555 Montgomery Street, Suite 1501
San Francisco, CA 94111
Telephone: (415) 772-4700

DEFENDANT'S COUNSEL
Thomas G. Abram
Vedder, Price, Kaufman & Kamholz, P.C.
222 North LaSalle Street, Suite 2600
Chicago, Illinois 60601-1003
Telephone: (312) 609-7500

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates and positions of your employment by Sears. To be valid and effective, any objections to approval of the settlement must be filed with the Clerk of the Court and served upon each of the above-listed attorneys no later than March 16, 2006. **DO NOT TELEPHONE THE COURT.**

If you file an objection to the terms of this settlement, you must enter an appearance in propria persona (meaning you choose to represent yourself) or through your own attorney. To do so, you or your attorney must file an Entry of Appearance with the Clerk of the United States District Court, District of New Jersey, and deliver copies to each of the attorneys listed above. Such Entry of Appearance must be filed with the Court and delivered to the above attorneys no later than March 16, 2006. You will then continue as a settlement class member either in propria persona or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the settlement will be on May 12, 2006 at 10:00 a.m., at the U.S. Courthouse at 402 East State Street, Trenton, New Jersey or such other, later date as the Court may authorize.

IF YOU INTEND TO OBJECT TO THE SETTLEMENT, BUT WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT FUNDS, YOU MUST TIMELY FILE YOUR CLAIM FORM AS STATED ABOVE. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OR ANY OTHER OBJECTIONS, AND YOU DO NOT HAVE A CLAIM FORM ON FILE, YOU WILL NOT RECEIVE ANY PROCEEDS FROM THE SETTLEMENT.

IV. EFFECT OF SETTLEMENT

A. Released Rights and Claims

The settlement is intended to settle all state and federal law claims against Sears that members of the Settlement Classes have asserted or could have asserted, including any claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of whatever nature, whether known or unknown, arising out of or related to this action as of the date of final approval by the Court. The release will extend to Sears Holdings Corporation and its consolidated subsidiaries, including without limitation,

Sears, Roebuck and Co. and Kmart Holding Corporation, and their present and former successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, insurers, attorneys and employees. If you are a member of either Settlement Class One or Two and do not elect to exclude yourself from the Settlement Classes, you will be deemed to have entered into this release and to have released the above-described claims against Sears, even if you do not submit a Claim Form. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

B. Payment to Claimants

Your settlement distribution will be paid approximately in July 2006 assuming final Court approval of this settlement, and assuming all rights to appeals, or appeals actually filed, are exhausted at that time.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on May 12, 2006 at 10:00 a.m. at the U.S. Courthouse at 402 East State Street, Trenton, New Jersey, to determine whether the settlement should be finally approved as fair, reasonable, and adequate.

The hearing may be continued without further notice to the settlement class. **It is not necessary for you to appear at this hearing unless you have timely filed an objection with the court and wish to be heard in support of your objection.**

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should consult the detailed "Stipulation and Settlement Agreement" which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Stipulation and Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court of New Jersey, 402 East State Street, Trenton, New Jersey.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

BY ORDER OF THE DISTRICT COURT