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EEOC v. Home Depot USA, Inc.; Thompson v. Home Depot USA, Inc.

Keywords

Thompson, Home Depot, EEOC, Home Depot U.S.A. Inc., 1:03-cv-00126-WYD -BNB, 04-cv-1776-WYD-BNB, consent decree, hostile work environment, retaliation, race, sex, national origin, employment law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

HOME DEPOT, U.S.A., INC. d/b/a
The Home Depot, a Delaware Corporation,

Defendant.

CONSENT DECREE

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I. INTRODUCTION

1. This Consent Decree ("Decree") is made and entered into by and between Plaintiff United States Equal Employment Opportunity Commission ("EEOC" or "Commission") and Defendant, Home Depot, U.S.A., Inc. ("Home Depot").
2. On August 25, 2004, the EEOC initiated this action by filing its Complaint. The EEOC's Complaint alleges that in Colorado, Home Depot violated Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, by engaging in a pattern or practice of retaliation and hostile work environment based on gender, race, and/or national origin. Home Depot has filed an Answer to the EEOC's Complaint, denying the allegations.
3. The EEOC's Complaint encompasses the following charges of discrimination: 320A200073 (Aird); 320A10436 (Alcala); 320 2003 01850 (Alvariza); 32A2003 00847 (Archuleta); 320A00883 (Baker); 320-2004-00216 (Brauchler); 320A01302 (Britton); 320-2004-00996 (Catura); 320200302059 (DeCoster); 320A01300 and 320A201381 (Googe); 320A200891 (Hainline); 320 2002 00891 (Hale); 320 2003 01197 (Harvey); 320 2003 01642 (Hicks); 32a2003 00575 (Kaina); 320 2003 01276 (Lamar); 32AA20019 (Lundstrom); 320-2004-01395 (Mascarenas); 32A2003 00626 (McFarland); 320A10220 (McMurtry); 320-2004-00297 (Merrill); 320-2004-00405 (Mosher); 320 2004 00287 (Nash); 320 2004 00701 (Parker); 320 2003 01810 (Rodriguez); 320A01454 (Russ); 320A201527 (Sadrieh); 320-2003-00407 (Salgado); R2003GY014 (Sandt); 320A01301 (Schiavone); 320A300036 (Sloan); 320A10978 (Thompson); 32A 2003 00142 (Trujillo); 32A 2003 00276 (Valesquez); 320 2003 01624 (Whitney); 320A10032 (Wong-Bull); 320 2003 01913 (Woodward); 320-2004-01111 (Young).
4. Although Home Depot denies the allegations in the EEOC's Complaint, the EEOC and Home Depot have agreed that it is in their mutual interest to settle the claims in the EEOC's Complaint in order to avoid protracted litigation. As a result of comprehensive and extensive settlement negotiations, the EEOC and Home Depot have reached an agreement to resolve the EEOC's claims on the terms set forth in this Decree.

II. JURISDICTION

5. The Court has jurisdiction over the parties and the subject matter of this lawsuit. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The Court shall retain jurisdiction of this action for the duration of the Decree for the purposes of entering all orders, judgments, and decrees that may be necessary to implement the relief provided herein.

III. DEFINITIONS

6. **Parties:** The Parties to this Decree are the U.S. Equal Employment Opportunity Commission and Home Depot, U.S.A., Inc. The Charging Parties, the Potential Class Members, the Class Claimants, and the Class Members, as defined below, are not Parties.

7. **Effective Date:** The Effective Date of the Decree is the date on which it is approved by the Court.
8. **Charging Parties:** The Charging Parties are the individuals who filed the charges of discrimination listed in Paragraph 3 above.
9. **Class Administrator:** The Class Administrator is the individual retained to carry out the administrative functions necessary to distribute the Class Settlement Fund, as more specifically provided in Paragraph 45.
10. **Class Claimants:** Class Claimants are Potential Class Members who submit claims under Paragraph 46 of this Decree, seeking to receive a settlement payment from the Class Settlement Fund.
11. **Class Members:** Class Members are Class Claimants who have been determined by the EEOC to be entitled to a Claim Share from the Class Settlement Fund.
12. **Class Settlement Fund:** The Class Settlement Fund is a settlement fund of \$2,500,000 established by Home Depot to compensate Class Members for Title VII claims arising during the Relevant Time Period and alleging either retaliation or harassment/hostile work based on gender, race, and/or national origin.
13. **Claim Share:** A claim share is the settlement amount that the EEOC determines will be paid to a particular Class Member.
14. **Final Class Distribution List:** The Final Class Distribution List is a court-approved list indicating the Class Members' names, addresses, and payment amounts, which list will determine final disbursement of the Class Settlement Fund.
15. **Potential Class Members:** Potential Class Members are individuals who were employed by Home Depot in Colorado at any time from, and including, January 1, 2000 through the Effective Date; provided, however, that Charging Parties, and persons who, prior to the Effective Date, waived or released Title VII claims from the Relevant Time Period alleging retaliation or harassment/hostile work environment based on gender, race, and/or national origin, are not Potential Class Members.
16. **Relevant Time Period:** For purposes of Paragraph 46.04 and the foregoing definitions of Potential Class Members (Paragraph 15) and Class Settlement Fund (Paragraph 12), the Relevant Time Period is the period from, and including, January 1, 2000 through the Effective Date.

IV. GENERAL PROVISIONS

17. **Scope:** The terms of this Consent Decree cover all Home Depot facilities and employees in Colorado. Home Depot's obligations under this Decree are limited to the State of Colorado.

18. Term of the Decree: The Consent Decree shall remain in effect for thirty (30) months subsequent to the Effective Date, subject to relevant legal standards for the modification of a consent decree to extend its terms.

19. Compliance with Federal EEO Laws: Nothing in this Consent Decree shall be construed to limit or reduce Home Depot's obligations to comply with the statutes enforced by the Commission: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, Age Discrimination in Employment Act, 29 U.S.C. § 621, Equal Pay Act, 29 U.S.C. § 206(d).

20. Effect of Consent Decree: This Consent Decree fully and completely resolves all claims raised by EEOC's Complaint, as to acts and practices up to the Effective Date of this Consent Decree.

21. Complete Consent Decree: This Consent Decree constitutes the complete understanding between the Home Depot and the Commission with respect to the matters herein.

22. Severability: If one or more provisions of this Consent Decree are rendered unlawful or unenforceable by act of Congress or by decision of the United States Supreme Court, the parties shall attempt to agree upon what amendments to this Consent Decree, if any, are appropriate to effectuate the purposes of this Consent Decree consistent with the change in law which precipitated invocation of this provision. In any event, the unaffected provisions will remain enforceable.

23. Non-Admission of Liability: By entering into this Consent Decree, Home Depot denies and does not admit, either expressly or implicitly, that it has violated any federal, state, or local law, or that it has any liability under any of the above-referenced charges. Home Depot maintains and has maintained that it provides equal employment opportunities for all employees and applicants, and has now entered into this Settlement Consent Decree to avoid the disruption, costs, delay, and expense of litigation.

24. Waiver of Commission Claims: The Commission agrees not to use any of the above-referenced charges as the jurisdictional basis for filing a lawsuit against Home Depot. However, nothing in this Consent Decree shall be construed to preclude the Commission from bringing suit to enforce this Consent Decree in accordance with the enforcement provisions of Section IX ("Enforcement") below. Neither does it preclude the Commission from filing lawsuits based on charges and/or claims not resolved in this Consent Decree.

25. Reserved Rights: The Commission, in accordance with its normal policy, reserves all rights to proceed with respect to matters not covered in this Consent Decree and to secure relief on behalf of aggrieved persons not covered by this Consent Decree. Under no circumstances shall the Commission, by commenting or electing not to comment upon policies or procedures that might be implemented under this Consent Decree, be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policies upon equal employment opportunities. Nor shall the Commission, by commenting or electing not to comment upon said

policies or procedures, be considered to have accepted the validity of, or approved, the provisions adopted by the Home Depot, except to the extent such policies are required under this Consent Decree. No provision of this Consent Decree is intended to limit the protections or expand the rights afforded the parties by operation of the principles of preclusion.

26. Charges Filed After May 14, 2004: The EEOC will not base EEOC litigation on any charges which (a) allege harassment, hostile work environment, or retaliation in violation of Title VII; (b) are filed after May 14, 2004; and (c) are based entirely on conduct which occurred prior to the Effective Date. Such charges will otherwise be handled according to the EEOC's usual procedures. Individuals who filed charges after May 14, 2004 but prior to the Effective Date, alleging retaliation or hostile work environment based on gender, race, and/or national origin in violation of Title VII, shall be considered Potential Class Members.

V. AFFIRMATIVE RELIEF

27. Posted Notice: Within 30 days of the Effective Date of this Consent Decree, in all facilities within the scope of this Consent Decree, Home Depot shall post in prominent places frequented by employees, a copy of the "Notice to Employees," attached as Exhibit 1. The Notice shall remain posted for twelve (12) months. Upon written request from the EEOC to Home Depot within thirty (30) days prior to the end of such twelve (12) months, the Notice to Employees shall remain posted for the remaining term of the Decree. If Defendant should determine that the Notice has become defaced or illegible, Defendant will replace it with a clean copy. Within ten (10) days after posting, Defendant shall certify to the Commission, in writing, that the Notice has been properly posted and, should the EEOC exercise its option to have the Notice posted for longer than twelve (12) months, Home Depot shall recertify on an annual basis that the Notice remains posted.

28. Prohibition: Home Depot, its officers, agents, servants, employees, successor in interest and all persons acting or claiming to act in its behalf and interest in Colorado shall not (a) create or tolerate a hostile work environment based on gender, race, and/or national origin or (b) engage in retaliation against employees who report or complain about what they reasonably perceive to be unlawful discrimination based on age, race, national origin, sex, religion, and/or disability.

29. Consent Decree Coordinator: By the Effective Date of this Consent Decree, Home Depot will designate a senior level employee, with experience in human resources management, to serve as Consent Decree Coordinator ("the Coordinator") to oversee the implementation by Home Depot of the terms of this Consent Decree. The Coordinator will be available to covered employees to discuss questions, complaints, and concerns about discrimination or retaliation, to provide answers to questions, and to explain Home Depot's policies against discrimination and retaliation. If the Coordinator is not based in Colorado, the Coordinator will spend as much time in Colorado as is necessary to fulfill his or her responsibilities. It is anticipated that the Coordinator will spend at least fifteen (15) days per year in Colorado. In addition, the Coordinator will conference with the EEOC on a quarterly basis to review quarterly reports and respond to questions relevant to EEOC's compliance monitoring, unless the EEOC determines that such meeting is unnecessary.

30. Coordinator Oversight of EEO Complaint Investigations:

30.01 The Coordinator shall be responsible for overseeing investigations within the covered area of all allegations of harassment/hostile work environment and all allegations of retaliation for complaints about discrimination. The Coordinator may make recommendations concerning the conduct of any investigation, and may interview the complaining party if the Coordinator deems it appropriate.

30.02 Home Depot will inform all employees in Colorado of the appointment and function of the Coordinator.

30.03 Home Depot will modify the complaint process to require that complaints of potential harassment/hostile work environment and/or retaliation be made in writing.

30.04 Within seven (7) calendar days after the written notice of potential harassment/hostile work environment and/or retaliation has been received by Home Depot, a copy will be sent to the Coordinator, when an allegation is made with the human resources department, or sent to the human resources department, when an allegation is made with the Coordinator.

30.05 Each individual who files a complaint of potential harassment/hostile work environment and/or retaliation will be given a written notice of the complaint procedures, including the name, address, and phone number of the Coordinator, and an explanation of the Coordinator's function. Additionally, the notice will advise the complainant of the prohibition against retaliation, and will encourage the complainant to promptly report any perceived retaliation.

30.06 Upon completion of the investigation, Home Depot will promptly prepare a written report summarizing the investigation undertaken and any remedial actions taken or proposed, and will also provide the complainant a closing notice, advising of the outcome of the investigation. A copy of the investigative report and the closing notice to the complainant will be provided to the Coordinator.

30.07 Nothing in this process is intended to preclude any employee from filing a charge of discrimination with the Commission or a state fair employment agency. If such a charge is filed, Home Depot will follow its standard procedures for investigating the alleged discrimination.

31. EEOC Monitoring: The EEOC will be responsible for monitoring Home Depot's compliance with the Consent Decree. Should the EEOC decide to retain an individual to assist it with monitoring during the term of this Consent Decree, his or her reasonable fees and expenses, not to exceed \$50,000, shall be paid from an escrow account funded by Home Depot and administered by the Fund Administrator (as defined in Paragraph 45.01). The expense of such escrow account and attendant Administrator services will be borne by Home Depot, and will not be included in the limitation on Claim Administration fees under Paragraph 45.01. Any such individual retained by the EEOC to assist it with monitoring will report exclusively to the

EEOC, and reports or recommendations, if any, will be submitted exclusively to the EEOC. The EEOC, in its sole discretion, will determine whether to initiate an enforcement action for alleged non-compliance, subject to the Informal Resolution Process outlined in Paragraph 50.

32. Review of Policies and Procedures: During the first year of this Decree, Home Depot will review its existing EEO policies, procedures, practices, and training applicable in Colorado, and in Colorado will institute, add to, or redistribute policies, procedures, practices, and training in the areas set forth below. Upon completion of the policy review project, Home Depot will provide the EEOC with a report summarizing the review process and describing any new or revised policies, procedures, practices or training, together with a schedule for implementing any such changes.

32.01 Complaint Procedure: Home Depot will ensure that its complaint process provides at least the following requirements:

- a. Ensure that a copy of the policy, including complaint procedure, will be provided to every employee, and redistributed to employees periodically.
- b. Ensure that the policy and complaint procedure is written in a manner calculated to be understood by the average Home Depot employee.
- c. Home Depot will adopt other measures to ensure effective dissemination of its policy and complaint procedure, such as, posting them in central locations and incorporating them into employee handbooks.

32.02 Anti-Harassment Policy: Home Depot will ensure that its anti-harassment policy provides at least the following requirements:

- a. A clear explanation of prohibited conduct.
- b. Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation.
- c. A clearly described complaint process that provides accessible avenues of complaint.
- d. Assurance that Home Depot will protect the confidentiality of harassment complainants to the extent possible, given Home Depot's obligation to thoroughly investigate allegations of discrimination.
- e. A complaint process that provides a prompt, thorough, and impartial investigation.
- f. Assurance that Home Depot will take prompt and appropriate corrective action when it determines that harassment has occurred.

32.03 Anti-Retaliation Policy: Home Depot will ensure that its anti-retaliation policy prohibits any form of retaliation against employees who engage in conduct protected by statutes enforced by the EEOC, and that individuals shown to have engaged in such retaliation will be appropriately disciplined, up to and including discharge.

32.04 Management Evaluation and Accountability Policy: Home Depot will ensure that its management evaluation and compensation system includes compliance with the company's EEO policies and procedures, and compliance with this Decree as factors for evaluating manager performance.

32.05 Complaint Investigation Policy: Home Depot will take reasonable measures to ensure that all complaints of discrimination, harassment, or retaliation will be investigated and that all records compiled or relied upon during the investigation, including without limitation witness statements and notes of the investigation, shall be maintained by Home Depot.

32.06 Compliance with EEO Laws: Home Depot will ensure that all personnel of Home Depot, regardless of position or rank, are required to comply with Home Depot's policies and procedures and the laws dealing with discrimination; and that any management official, supervisor, or employee who violates any such policy, procedure or laws shall be subject to appropriate disciplinary action, up to and including discharge.

VI. TRAINING

33. Development of EEO Training Program: Within sixty (60) days of the Effective Date of this Decree, Home Depot shall submit to the EEOC proposed EEO training programs for (a) non-supervisory employees, (b) supervisory employees, and (c) human resource employees in Colorado. Each training program will include the following information: (a) a detailed agenda, and (b) a plan to ensure that all such employees receive the required training. For each training program other than new employee orientation, Home Depot will provide a brief summary of qualifications for the individual(s) who will conduct the training. Within thirty (30) days of receiving Home Depot's training proposal, the EEOC may advise Home Depot of any recommended changes.

34. Amount of Training Required

34.01 Non-Supervisory Employees: On an annual basis, Home Depot will provide non-supervisory employees in Colorado at least two (2) hours of EEO training. At least two (2) hours of EEO training will be provided to all non-supervisory employees within sixty (60) days of hire, but in no event shall the company be required to provide any non-supervisory employee more than two (2) hours of training per year under this provision. This training may be by in-person presentation or some combination of in-person presentation and presentation by videotape, online program, or other similar medium.

34.02 Management and Supervisory Employees: On an annual basis, Home Depot will provide supervisory and management employees in Colorado with at least four (4) hours of EEO training. At least four (4) hours of EEO training will be provided to all supervisory and management employees within sixty (60) days of hire or promotion into a supervisory position, but in no event shall the company be required to provide any management or supervisory employee more than four (4) hours of training per year under this provision. This training may be by in-person presentation or some combination of in-person presentation and presentation by videotape, online program, or other similar medium.

34.03 Human Resource Employees: On an annual basis, Home Depot will provide at least fourteen (14) hours of EEO training to human resource employees in Colorado and District-level human resource managers with responsibility for Colorado. At least fourteen (14) hours of EEO training will be provided to all such human resource employees within sixty (60) days of hire or promotion into a human resource position in Colorado, or with the above-specified responsibility for Colorado, but in no event shall the company be required to provide any human resource employee more than fourteen (14) hours of training per year under this provision. This training may be by in-person presentation or some combination of in-person presentation and presentation by videotape, online program, or other similar medium.

35. Required Subjects of Training: The EEO training programs shall include:

35.01 For all employees in Colorado, instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Pregnancy Discrimination Act.

35.02 For all employees in Colorado, a review of Home Depot's non-discrimination employment policies with particular emphasis on the complaint procedure, prohibitions on retaliation, and the requirement to submit discrimination complaints in writing.

35.03 For supervisory, management, and human resource employees in Colorado or with the above-specified responsibility for Colorado, instruction on (1) the specific requirements of Paragraph 28 ("Prohibition") of this Consent Decree, and (2) the complaint procedure, anti-harassment policy, anti-retaliation policy, and complaint investigation policy, including the proper procedures for responding to and recording in writing complaints of discrimination or harassment, and (3) Home Depot's obligations under Paragraphs 32.04 and 32.06 of this Decree.

36. EEOC Attendance at Training: At least thirty (30) days prior to any scheduled training under this Section VI ("Training"), except for orientation of new employees or newly promoted employees, Home Depot will provide EEOC notice of the date, time, and location of the scheduled training. EEOC, at its discretion, may attend the scheduled training, provided

however, that Home Depot is under no obligation to modify the date of a proposed session to accommodate the schedule of a Commission representative who may attend. EEOC representatives who attend any scheduled training, will not interject themselves into the training or otherwise participate except as invited by the program presenter(s).

37. Registry of Attendance: Home Depot will require that each person attending any training under this provision sign a registry of attendance for the training session. Logging onto web-based training shall constitute signing a registry for that training.

38. Dissemination of Information about the Consent Decree:

38.01 Within one-hundred twenty (120) days of the Effective Date of this Decree, Home Depot shall conduct meetings advising all employees in Colorado of the terms and conditions set forth in paragraphs 27-31 of Section V ("Affirmative Relief") of this Consent Decree. Home Depot shall notify the Commission of dates, times, and locations at least twenty (20) business days prior to each scheduled Consent Decree training session, and the EEOC shall have the right to attend any or all of such meetings. In addition, Home Depot shall inform employees in Colorado that any breach of, or failure to comply with, the terms and conditions in the Consent Decree will subject employees to appropriate disciplinary action, up to and including termination of employment. The notification requirements of this paragraph may be combined with the training required under Section VI ("Training"). An employee who fails to attend the Consent Decree training session in the facility in which he or she is employed will be provided written notice of the required information.

38.02 Annual training and orientation for new employees and newly promoted employees shall include the subjects required for training under the preceding Paragraph 38.01.

VII. REPORTING AND RECORD-KEEPING

39. Initial Information: Within sixty (60) days after the Effective Date of the Consent Decree, Home Depot will provide the EEOC with the following information:

39.01 Personnel Policies and Procedures: Copies of the personnel policies and/or procedures listed on Exhibit 2, current as of the Effective Date of the Consent Decree.

39.02 Toolbox: A copy of the current "Toolbox" provided to new employees in Colorado, as of the Effective Date of the Consent Decree.

40. Quarterly Information: On a quarterly basis, Home Depot will provide the following information:

40.01 Title VII Complaint Report: A report containing the following information regarding employee internal complaints of alleged discrimination, harassment, or

retaliation under Title VII, including without limitation any such complaints made through Home Depot's "Town Hall" meetings, "Open Door" policy, and/or "Awareline":

- a. Name of complaining employee
- b. Date of complaint
- c. Store number or facility where complaining employee works
- d. Name and position of person(s) to whom the employee complained
- e. A copy of the complaint

Information in items a-d above shall be provided in electronic format and shall only be required for complaints that are reduced to writing.

Data produced pursuant to this provision may not be utilized by the EEOC as a basis to initiate a Commissioner's charge of discrimination. Thus, for example, if the data produced reflects that a number of female employees have internally complained about unequal pay, the EEOC cannot initiate a Commissioner's charge based on this data. If, however, the women who internally complained also file charges of discrimination, those charges, filed after the Effective Date of the Consent Decree, are not resolved by this litigation.

40.02 Investigation Files: For complaint investigations of harassment/hostile work environment or retaliation during the reporting period, copies of closing notices advising complainants of the outcome of the investigations and copies of written reports summarizing the investigation and any remedial action taken or proposed, and, as requested by the EEOC, reasonable access to the following information from the investigative files:

- a. Copy of written complaint, including any written reports of supervisors
- b. Copies of all investigative notes
- c. Copies of all witness statements
- d. Copies of all documents compiled during the investigation

40.03 Awareline records: Copies of all Awareline records for complaints filed or investigated during the reporting period. Awareline is a program for receiving employee complaints through a toll-free telephone number. The program was previously called Alertline. This provision applies to the Awareline, and if the name is changed, to any subsequent program for receiving employee complaints through a toll-free telephone number.

40.04 Personnel Policies and Procedures: Copies of personnel policies or procedures implemented or issued during the reporting period, including without limitation, any new policies or procedures implemented, and any modifications to the policies or procedures listed on Exhibit 2.

40.05 Toolbox Changes: Copies of any new policies or procedures or other modifications to the mixture of materials that constitute the “Toolbox.”

41. Annual Information: On an annual basis, Home Depot will provide the following information:

41.01 Training Report: Electronic database containing the following information regarding EEO training conducted during the reporting period, including any EEO-related training conducted as part of leadership training, and including any EEO-related training conducted as part of a partnership or other initiative:

- a. Description of the training
- b. Where and when the training was conducted
- c. Number of attendees, divided by position

41.02 Training Materials: Home Depot will provide the EEOC with an agenda for each training identified in the Training Report. For each training identified in the Training Report, excluding new employee orientation and training provided by outside vendors, Home Depot will provide a resume of qualifications for each instructor. Upon request by the EEOC, Home Depot will provide copies of materials distributed during the training.

42. Records to be Maintained: For the duration of the Consent Decree, Home Depot will maintain the following records:

42.01 Personnel files and payroll records for all individuals employed by Home Depot in Colorado during the term of the Consent Decree.

42.02 All records and reports created during the Consent Decree, relating to employee promotions, including without limitation, Job Preference Process ("JPP") records, or other equivalent system for recording employee interest, qualifications, and eligibility for promotion, and all underlying data, electronic or otherwise.

42.03 Records relating to employee complaints of Title VII discrimination.

42.04 All records relating to complaints filed with Awareline, or any successor program for receiving employee complaints through a toll-free telephone number.

- 42.05 Records relating to evaluation of management performance.
- 42.06 Materials distributed as part of EEO-related training conducted during the Consent Decree.
- 42.07 Toolbox materials distributed to new employees during the Consent Decree.
- 42.08 Personnel policies and procedures in effect during the Consent Decree.
- 42.09 Job descriptions and any video and/or CD-Rom materials describing job duties.

VIII. MONETARY RELIEF

43. Charging Party Settlements: Home Depot agrees to pay not more than \$3,000,000 in resolution of claims of the Charging Parties listed in Paragraph 3, above. Within twenty (20) days of receiving a signed release, Home Depot will pay each Charging Party who provided such release the amount specified in Exhibit 3, attached hereto (submitted under seal), for that Charging Party.

44. Class Settlement

44.01 Class Settlement Fund: The sum of \$2,500,000 will constitute the Class Settlement Fund. Under no circumstance shall the Class Settlement Fund exceed \$2,500,000.

44.02 Limitation on Use of Settlement Funds: The Class Settlement Fund shall be distributed only in accordance with the provisions of this Decree.

45. Administration of Class Settlement Fund

45.01 Fund Administrator: The EEOC and Home Depot will jointly select a Fund Administrator (“Administrator”) who will perform all functions necessary to administration of the Class Settlement Fund, except the initial mailing under Paragraph 46.02.01, issuing checks under Paragraph 47.06, and issuing tax forms and related reporting under Paragraph 48, which functions will be the responsibility of Home Depot. The Administrator’s fees and reasonable expenses not to exceed \$80,000 will be paid by Home Depot.

45.02 Contract for Administrator Services: The EEOC and Home Depot shall enter into a contract with the Administrator (“Service Provider Contract”), which contract will include among its terms: (a) the terms of compensation for the Administrator; (b) a description of the Administrator’s responsibilities; (c) a listing of actions which may be taken by the Administrator without seeking prior authorization from the EEOC; and (d) the process for payment of the Administrator’s invoices for fees and expenses.

45.03 Responsibilities of Administrator: The Administrator will have the following responsibilities:

- a. Maintain a database of Potential Class Members, based on employee data provided by Home Depot pursuant to Paragraph 46.01, and information submitted by Class Claimants.
- b. Attempt to locate Potential Class Members whose mailings are returned as undeliverable.
- c. Receive and process claims of Class Claimants.
- d. Evaluate the claims of Class Claimants to recommend (a) which are Class Members, and (b) the amount of each Class Member's Class Share.

46. Claim Process for Distribution of Class Settlement Fund.

46.01 Potential Class Member Database: Within forty-five (45) days after the Effective Date of this Decree, Home Depot will provide the Administrator with an electronic database with the name, social security number, last known address, and last known phone number of each Potential Class Member.

46.02 Notice of Class Settlement

46.02.01 Initial Mailing: Within forty-five (45) days after the Effective Date of this Consent Decree, Home Depot will mail to all Potential Class Members a Claim Package consisting of: (1) a cover letter; (2) a Class Claim Form; and (3) a postage paid return envelope addressed to the Administrator. The Initial Mailing will have the return address of the Administrator.

46.02.02 Claims Receipt Period: For a period of **ninety (90)** days after the initial mailing provided in Paragraph 46.02.01 ("Claims Receipt Period"), the Administrator shall accept claim forms from Class Claimants. No new claims will be accepted after conclusion of the Claims Receipt Period.

46.02.03 Additional Mailing: During the Claims Receipt Period, the Administrator shall make reasonable efforts to locate and provide Claim Packages to individuals whose Claim Packages from the Initial Mailing are returned as undeliverable. Upon request by the Administrator, Home Depot will provide additional contact information from the company's employee database. During the Claims Receipt Period, the Administrator will mail a Claim Package to any individual claiming to be a Potential Class Member, or seeking information on behalf of a Potential Class Member.

46.02.04 Toll-Free Telephone Number: The Administrator will establish a toll-free telephone number to receive telephone inquiries regarding the Class Settlement Fund and the Claim Process.

46.02.05 Website: The Administrator will develop a website to provide administrative information about the Class Settlement Fund and Claim Process. The content of the website shall be developed by the Administrator and submitted to the EEOC for approval prior to being used.

46.02.06 Maintenance of Website and Telephone Message: The website and telephone number will remain active until the Administrator determines they no longer serve a useful purpose in the processing of claims. Provided, however, that the website shall be removed from internet access no later than thirty (30) days after distribution of the Class Settlement Fund under Paragraph 47.06.

46.03 Evaluations of Class Claims: All Class Claim Forms shall be submitted to the Administrator. The Administrator shall evaluate the claims of all Class Claimants, based upon the criteria set forth in Paragraph 46.04, and make recommendations to the EEOC on (a) who among the Class Claimants meet the criteria to participate as Class Members, and (b) the amount of each Class Member's Claim Share. The Administrator's recommendations shall be submitted to the EEOC within **thirty (30) days** after close of the Claims Receipt Period established in Paragraph 46.02.02. The EEOC has final authority for determining which Class Claimants meet the criteria to participate as Class Members and the amount of each Class Member's Claim Share. The EEOC's final determinations will be based on the criteria set forth in Paragraph 46.04, and whatever evidence the EEOC deems appropriate, including evidence received by the EEOC during its investigation of the charges underlying this action and evidence received in connection with the claims process provided under this Consent Decree.

46.04 Criteria for Determination of Class Claims: The Administrator's recommendation and the EEOC's determinations as to who is a Class Member and the amount of each Class Member's claim share shall be based on an evaluation of the following:

46.04.01 Retaliation: Whether the Claimant has established that he or she (a) was employed by Home Depot in Colorado during the Relevant Time Period; (b) engaged in protected conduct under Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a); and (c) because of the protected conduct was subjected to some adverse employment action by Home Depot during the Relevant Time Period.

46.04.02 Harassment/Hostile Work Environment: Whether the Claimant has established that during the Relevant Time Period, (a) he or she was verbally or physically harassed based on gender, sex, race, and/or national origin, or subjected to a hostile work environment based on gender, sex, race and/or national origin; and (b) that such harassment and/or hostile work environment

was sufficiently severe or pervasive to alter the Claimant's terms and conditions of employment.

46.04.03 Valuation of Claim Share: The value of Claim Shares will be based on the duration and severity of the unlawful employment practices and, as appropriate, the extent of the harm and/or economic losses suffered.

46.05 Class Distribution List: The EEOC shall create a Class Distribution List, setting forth the name, address, and Claim Share for each Class Member, with the Claim Share divided between back pay and compensatory damages. The EEOC will submit the Class Distribution List to the Administrator within **thirty (30) days** after receiving the Administrator's recommendations under Paragraph 46.03.

46.06 Notice of Determination: Within **ten (10) days** after the EEOC submits the Class Distribution List, as provided in Paragraph 46.05, the Administrator shall mail a notice to each Class Claimant that informs the Class Claimant whether he or she has been determined by the EEOC to be a Class Member, and, if so, an approximate amount of the Class Member's Claim Share. All Class Claimants shall be provided by the Administrator with a Notice of Rights that explains the process to obtain a review of the EEOC's determination. Class Claimants who are determined to be Class Members shall also be provided with (a) information on how to receive the Claim Share; (b) a Release of Title VII claims for retaliation and Title VII claims for hostile work environment based on gender, race, and/or national origin ("Class Member Release"); and (c) a postage prepaid envelope addressed to the Administrator.

46.07 Period for Class Members to Accept Claim Shares: Class Members shall have thirty (30) days after the mailing in Paragraph 46.06 to either (a) accept the Claim Share by signing and returning the Class Member Release to the Administrator; or (b) file a Request for Review under Paragraph 47 below. Failure to return the Class Member Release or file a Request for Review within this thirty-day period shall be deemed to be a rejection of Claim Share by the Class Member; provided, however, that the EEOC and Home Depot may, by agreement, accept a late-returned Class Member Release at any time prior to the Review Hearing. Class Members who reject the Claim Share shall not receive a Notice of Right to Sue.

46.08 Administrator's Statement of the Class: Within three (3) business days after the last day for any Class Member to accept a Claim Share, the Administrator shall send to Home Depot all signed Class Member Releases, and shall send to Home Depot and the EEOC a Statement of the Class, listing all Class Members who have accepted Claim Shares by returning a signed Class Member Release, and separately listing all Class Members who have not accepted a Claim Share.

47. Requests for Review and Review Hearing

47.01 Scope of Requests for Review: Requests for Review may only be made by Class Claimants. Any Class Claimant who was determined by the EEOC not to be a Class Member may seek review of that determination and may seek a determination of a Claim Share. Any Class Member may seek review of the Class Member's individual Claim Share determination. No other reviews shall be permitted. Neither this Decree nor any of its terms or provisions, may be subject to a Request for Review, or otherwise challenged by any Potential Class Member, Class Claimant, or Class Member.

47.02 Filing a Request for Review: A Claimant may submit a Request for Review by mailing, or otherwise delivering to the Administrator a written explanation of why the determinations of Class Member status or Claim Share amount should be changed. A Request for Review must be received by the Administrator within thirty (30) days after the Notices of Determination required by Paragraph 46.06, are mailed.

47.03 Informal Resolution Efforts: The Administrator shall consider each Request for Review and may undertake any additional investigation the Administrator deems necessary. Within sixty (60) days after the Administrator mails notices required by Paragraph 46.06, the Administrator shall make written recommendations to the EEOC on each Request for Review, specifying whether the Administrator believes the EEOC should change its determinations of Class Member status or Claim Share amount. The EEOC shall then accept, reject, or modify the Administrator's recommendations on decisions that are subject to Requests for Review.

47.04 Review Hearing: At the close of the informal resolution process under Paragraph 47.03, the Administrator will forward to the Court all Requests for Review which have not been resolved to the Claimant's satisfaction, with copies to Home Depot and the EEOC. The Court may conduct a Review Hearing to determine unresolved Requests for Review, if any. The Court shall change the EEOC's determinations only upon a finding that the EEOC's determination constitutes a gross deviation from the EEOC's application of the provisions contained in Paragraph 43.03. At least seven (7) days prior to the Review Hearing, the EEOC will file in court, under seal, a proposed Final Class Distribution List, with copies to Home Depot and the Administrator. The Court may approve the proposed Final Class Distribution List, or order modifications as necessary to effect the Court's rulings on Class Claimants' Requests for Review. Any modifications by the Court shall not increase Home Depot's obligations under this Decree.

47.05 Period for Acceptance After Resolution of Requests for Review: A Class Member who files a timely Request for Review, will be allowed ten (10) days after informal resolution under Paragraph 47.03, or final determination by the Court under Paragraph 47.04, of his or her request for review to accept the Claim Share by signing and returning the Class Member Release. Failure to return the Class Member Release within the ten-day period allowed in this Paragraph 47.05, will be deemed to be a

rejection of the Claim Share; provided, however, that the EEOC and Home Depot may, by agreement, accept a late-returned Class Member Release at any time prior to distribution of the Class Settlement Fund.

47.06 Distribution of Class Settlement Fund

47.06.01 Payments To Class Members: Within twenty (20) days after the Court's Order regarding the Final Class Distribution List, Home Depot shall distribute the Class Settlement Fund to Class Members in the amounts reflected in the Final Class Distribution List approved by the Court.

47.06.02 Distribution of Undistributed and Unclaimed Portion of Class Payment: All undistributed and unclaimed funds which remain for sixty (60) days after the allowable time to negotiate a Class Settlement Fund check, shall be donated to the National Organization for Women (NOW), the Urban League, and/or the National Council for La Raza (NCLA).

48. Tax Treatment of Payments to Charging Parties and Class Members

48.01 From payments designated as wages, Home Depot will withhold all legally-required deductions, including but not limited to federal and state income taxes and withholding under the Federal Insurance Contributions Act ("FICA") and Federal Unemployment Tax Act ("FUTA"), and forward such amounts withheld to the appropriate governmental agency.

48.02 Home Depot shall prepare and distribute tax reporting forms to each Charging Party, Attorney, and Class Member who receives payment under this Decree.

48.03 Home Depot shall make appropriate reports to the Internal Revenue Service and other tax authorities.

48.04 Home Depot shall be responsible for the legally required employer's share of any taxes applicable to payments under this Decree. Charging Parties and Class Members shall be responsible for payment of the employee's share of taxes owed to any governmental authority as a result of payments under this Decree.

IX. ENFORCEMENT

49. Enforcement by EEOC: If the EEOC concludes that Home Depot is not in compliance with the Consent Decree, the EEOC may, after complying with Informal Resolution Process described in Paragraph 50, initiate an enforcement action. In determining whether Home Depot is in compliance with the injunctive provisions of the Consent Decree, the EEOC will give due consideration to whether Home Depot has made good faith efforts to (a) investigate allegations of hostile work environment and retaliation; and (b) take prompt remedial actions. As a general rule, a single event of retaliation will not warrant an enforcement action, if Home Depot has

adequately investigated and taken prompt remedial steps.

50. Informal Resolution Process:

50.01 Notice: Before initiating an enforcement action, the EEOC will provide Home Depot written notice of the dispute. The notice may include a reasonable request for documents or information relevant to the dispute.

50.02 Home Depot Request for Records: Within five (5) days after receiving the Notice, Home Depot may submit a reasonable request for documents or information relevant to the dispute.

50.03 Response: Within fourteen (14) days after service of the Notice, Home Depot will provide any such requested records. If Home Depot serves a record request, EEOC will provide any such requested records within fourteen (14) days after service of the request. Home Depot will respond to the Notice within fourteen (14) days after receiving records produced by the EEOC, or if Home Depot does not request records, within fourteen (14) days after service of the Notice.

50.04 Service: Service under this informal resolution process will be made by hand-delivery or overnight delivery.

50.05 Meeting: After service of the Notice, the Parties will schedule a telephone or in-person meeting to attempt to resolve the dispute.

50.06 Dispute Resolution Period: If the dispute has not been resolved within sixty (60) days after service of the Notice, the EEOC may commence an enforcement action.

50.07 Non-binding Advisory Evaluation: Before an enforcement action may be commenced based on hostile work environment, the parties will submit the dispute to a disinterested, mutually agreed upon attorney, who will provide a non-binding advisory evaluation. This process must be completed within sixty (60) days after service of the Notice above, unless the parties mutually agree to extend the time.

51. Expedited Proceedings: The provisions of this Section IX ("Enforcement") do not prevent the Commission from bringing an issue before the Court when the facts and circumstances require immediate Court action under applicable legal standards.

X. MISCELLANEOUS PROVISIONS

52. Amendment: By mutual consent of the Parties, this Consent Decree may be amended in the interest of justice and fairness in order to execute the provisions involved.

53. Implementation: The Commission and Home Depot agree to take all steps that may be necessary to fully effectuate the terms of this Consent Decree.

54. Attorney Fees And Costs: The EEOC and Home Depot shall bear their own costs and attorneys' fees associated with this litigation and neither shall seek reimbursement for any investigative and/or litigation costs, fees, or expenses in this matter.

55. Computation of Time Periods: In computing any period of time prescribed or allowed by this Decree, unless otherwise stated such computation shall be made consistent with the Federal Rules of Civil Procedure.

56. Interpretation: The terms of this Decree are the product of joint negotiations and shall not be construed as having been authored by one of the Parties rather than another.

57. Counterpart Signatures: The parties expressly agree that this document may be executed by counterpart signatures.

58. Notice: Any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the appropriate parties as follows:

Regional Attorney
Denver District Office
Equal Employment Opportunity
Commission
303 E. 17th Avenue, Suite 510
Denver, CO 80203

Home Depot, U.S.A., Inc.
Beth Hahn, Director-Legal
Employment and Labor Law
3800 W. Chapman Ave.
Orange, CA 92868

SO ORDERED, ADJUDGED AND DECREED this _____ day of _____, 2004.

United States District Court Judge

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

HOME DEPOT, U.S.A., INC.

BY: _____
Joseph H. Mitchell
Regional Attorney

BY: _____
Jocelyn J. Hunter
Vice President Legal
Employment and Labor Law

Date: _____

Date: _____

APPROVED AS TO FORM:

Rita Byrnes Kittle, Trial Attorney
U.S. Equal Employment Opportunity
Commission
303 East 17th Avenue, Suite 510
Denver, CO 80203
Phone: (303) 866-1347

Attorney for Plaintiff EEOC

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Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Ave. NW
Washington, DC 20036
Phone: (202) 887-4000

Attorneys for Defendant Home Depot,
U.S.A., Inc.

NOTICE TO EMPLOYEES

This Notice is being posted as part of the remedy agreed to pursuant to an Consent Decree between Home Depot U.S.C., Inc. and the Equal Employment Opportunity Commission (EEOC).

Unlawful Discrimination: Under federal law, it is unlawful for an employer to discriminate based on race, color, religion, sex, national origin, age (over 40), or disability. This means that a supervisor or manager cannot make decisions about hiring, promotion, pay, or other conditions of employment, based on race, color, religion, sex, national origin, age (over 40), or disability. This also means that the work environment should be free from harassment or ridicule based on race, color, religion, sex, national origin, age (over 40), or disability.

Unlawful Retaliation: It is also unlawful to discriminate or retaliate against any individual who reports or complains about what he or she reasonably believes to be unlawful discrimination based on race, color, religion, sex, national origin, age (over 40), or disability.

Reporting Improper Conduct: If you are aware of any events, conduct, or information, which you believe may indicate some improper discrimination or harassment, it is very important that you report the information so the necessary steps may be taken to investigate, identify, and promptly remedy any problems. You may report such improper to conduct to any of the following:

Reporting to Home Depot: Within the Home Depot organization, you may make such a report to the Human Resource Manager in your store, or to any supervisor or manager. Additionally, you may make such a report through the Home Depot Awareline, by calling [insert toll-free Awareline number].

Reporting to the EEO Coordinator: Under the Consent Decree between EEOC and Home Depot, _____ has been designated as EEO Coordinator to ensure enforcement of the Consent Decree. By reporting a problem to the EEO Coordinator, you do not waive any rights to file a charge of discrimination with the EEOC or the Colorado Civil Rights Division. You may directly contact the EEO Coordinator:

[insert name and contact information for EEO Coordinator]

Reporting to the U.S. Equal Employment Opportunity Commission: The EEOC is responsible for enforcing federal laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Denver District office of the EEOC, at any of the following numbers:

Telephone: 303.866.1300
TTY: 303.866.1950
Fax: 303.866.1085
Toll Free: 1.800.669.4000

The Denver District office of the EEOC is located at 303 East 17th Avenue, Suite 510, Denver, Colorado 80205.

Reporting to the Colorado Civil Rights Division: The CCRD is the agency responsible for enforcing state laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Colorado Civil Rights Division at any of the following numbers:

Telephone: (303) 894-2997
Fax: (303) 894-7830
Toll Free English/Spanish: (800) 262-4845

The Colorado Civil Rights Division is located at 1560 Broadway, Suite 1050, Denver, Colorado 80202.

Home Depot Personnel Policies

Reasonable Accommodation
Code of Conduct (which includes anti-retaliation section)
Harassment and Non-Discrimination
Orientation
Staffing - External Selection
Staffing - Internal Selection
Associate Counseling
Terminations
Leave of Absence
Internal Moves/Promotion
Performance Management
Open Door Policy
Respect Policy
Performance Improvement Process