

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-01950-LTB-CBS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

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

Defendant.

SETTLEMENT AGREEMENT

I. RECITALS

1. This public enforcement action was instituted by Plaintiff, Equal Employment Opportunity Commission (“Commission” or “Plaintiff” or “EEOC”). The EEOC lawsuit alleges that Defendant Home Depot U.S.A. Inc., d/b/a The Home Depot (“Defendant”) violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”), by suspending and terminating Connie Hainline from her employment because she exercised her rights under Title VII by filing and resolving a charge of discrimination. Home Depot alleges that it terminated Ms. Hainline’s employment for legitimate, non-discriminatory reasons and denies that it violated Title VII.

2. The Commission and Defendant, desiring to settle this action by an appropriate Settlement Agreement (“Agreement”), agree to the jurisdiction of this Court over the parties and the subject matter of this action, and agree to the power of this Court

to enter a Settlement Agreement enforceable against the Parties hereto.

3. This Agreement is final and binding upon the parties as to the issues resolved, as well as upon their successors and assigns.

4. The parties agree that this Agreement fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that arise from the charge of discrimination filed by Connie Hainline, No. 320-2005-00618. It does not constitute an admission of liability by Home Depot of any kind.

5. For the purpose of amicably resolving disputed claims without the risks, uncertainties and expenses of continued litigation, the Defendant joins with the Commission in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

6. The parties stipulate to the jurisdiction of the Court over the parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.

7. The duration of this Agreement (the "Term") shall be two years from the date of signing by the Court (the "Effective Date").

III. ISSUES RESOLVED

8. This Agreement resolves all claims for damages arising out of the issues and claims set forth in Civil Action No. 06-cv-01950-LTB-CBS.

9. Defendant and its officers, agents, employees, successors, and all other

persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Agreement.

IV. MONETARY RELIF

10. Within thirty days of the Effective Date of this Agreement, Defendant, in settlement of this dispute and in exchange for a general release, shall pay the sum total of \$84,750 to Connie Hainline, \$19,750 of which shall be for past lost wages and \$65,000 of which shall be for other compensatory damages. Payment shall be mailed directly to Ms. Hainline at the address provided by the EEOC. The manner and terms of payment, and the scope of Ms. Hainline's general release shall be set forth in a separate settlement agreement between Home Depot and Ms. Hainline.

11. A copy of the settlement check(s) and any transmittal documents shall be forwarded to Rita Byrnes Kittle, Supervisory Trial Attorney, Equal Employment Opportunity Commission, 303 East 17th Avenue, Denver Colorado 80203

V. EQUITABLE RELIEF

A. Scope

12. The terms of this Agreement shall apply to all Defendant's facilities and employees in the Designated Group. The Designated Group shall consist of the Evergreen Store and other stores in the Denver Metropolitan area. At no time will this Agreement cover less than 10 stores.

B. Injunctive Relief

13. During the Term of this Agreement, Defendant, its officers, agents, successors and other persons in active concert or participation with them, or any of them,

are enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under Title VII of the Civil Rights Act of 1964, as amended, or because of such person's filing a charge, testifying or participating in any manner in any investigation, proceeding, hearing or lawsuit under Title VII.

14. Further, Defendant is enjoined from engaging in reprisal or retaliation of any kind against any person because such person was identified as a witness or possible witness for the Commission in the present action or the EEOC investigation giving rise to this action, because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Agreement.

C. Non-retaliation Policy

15. During the Term, Defendant shall maintain its Non-Retaliation Policy which is attached as Exhibit A or a similar policy.

16. Defendant shall post and keep posted for the Term, in a conspicuous place in each of its facilities in the Designated Group, where notices to employees and applicants for employment are customarily kept or posted, a copy of the Non-Retaliation Policy attached as Exhibit A.

D. Training

17. During the Term, Defendant shall conduct annual training for all the Department Heads, Assistant Store Managers and Store Managers in the Designated Group on the subjects and in the manner described below. All training under this

Paragraph shall be at Defendant's expense, conducted by outside vendors, internal employees certified by an outside vendor, or by video training purchased from an outside vendor.

18. The training will be conducted as follows:

a. Managerial and Supervisory Employees: Defendant will require Department Heads, Assistant Store Managers and Store Managers in the Designated Group to receive at least 2 hour of training during the Term. This training may be provided at one time or in two 1 hour sessions. This training will include: (a) employees' rights, under Title VII and the other federal anti-discrimination statutes, with an emphasis on the right to engage in protected activity either by opposing unlawful employment discrimination or by participating in the statutory complaint process by making a Charge of Discrimination, testifying or assisting or participating in any manner in an investigation, proceeding, hearing or litigation; (b) discussion of Defendant's Non-Retaliation Policy and Defendant's obligations under the anti-retaliation provisions of Title VII and the other federal anti-discrimination statutes; and (c) the penalties for engaging in retaliatory conduct. Additionally, Defendant will require employees newly hired or promoted into a managerial or supervisory position to complete the requisite training within 120 days of being hired or promoted.

b. Human Resource Employees: Defendant will require at least one employee with human resource responsibility for Defendant's employees in Colorado to receive two (2) hours of training annually for the Term. This training will include: (a) employees' rights, under Title VII and the other federal anti-discrimination statutes, with

an emphasis on the right to engage in protected activity either by opposing unlawful employment discrimination or by participating in the statutory complaint process by making a Charge of Discrimination, testifying or assisting or participating in any manner in an investigation, proceeding, hearing or litigation; (b) discussion of Defendant's Non-Retaliation Policy and Defendant's obligations under the anti-retaliation provisions of Title VII and the other federal anti-discrimination statutes; and (c) the penalties for engaging in retaliatory conduct. Additionally, Defendant will require employees newly hired or promoted into a human resource position to complete two (2) hours of training as described herein within 120 days of being hired or promoted into a human resource position.

19. Defendant agrees that the first such training for each employee group identified in Paragraphs 17 and 18 shall take place within sixty (60) days after the Effective Date of this Agreement. Defendant agrees that all personnel set forth above shall both register and attend the seminar training sessions. In the annual reports required under the Reporting provisions of this Agreement, Defendant shall submit copies of the agenda of the training programs, identify the individuals providing the training, and provide the registries of attendance.

E. Posting of Notice

20. Within ten (10) business days of the entry of this Agreement, Defendant shall post in a conspicuous place in each of its stores in the Designated Group where notices to employees are customarily kept or posted, the Notice attached as Exhibit B to this Agreement. The Notice shall remain posted for the Term. If the Notice becomes

defaced or illegible, Defendant will replace it with a clean copy. Defendant shall certify to the Commission, in writing, within thirty (30) days of the Effective Date of this Agreement that the Notice has been properly posted and shall provide recertification in each of the annual reports required under the Reporting provision of this Agreement.

F. Record Keeping And Reporting Provisions

21. For the duration of this Agreement, Defendant shall maintain all records concerning implementation of this Agreement.

22. Each party shall bear its own costs in conjunction with the maintenance of records, preparation of any report, access or copying of records, or interviews of employees.

23. Defendant shall provide annual reports to the Commission following the Effective Date of this Agreement. The first report shall be due thirty (30) days following 12 months after the Effective Date, and the second report shall be due thirty (30) days after the end of the Term.

24. Each report shall provide the following information:

a. Complaints of Retaliation: For purposes of this Paragraph 24, the term “complaint of retaliation” will include all documented complaints and any administrative charges filed with the Commission or equivalent state agency, within the Designated Group, which allege during the Term retaliation for engaging in activity protected by Title VII of the Civil Rights Act of 1964. Each report shall include: the name of each person making a complaint of retaliation to Defendant (if known) or to any federal, state, or local government agency; a brief summary of each complaint, including

the date of the complaint, the name of the individual(s) who allegedly engaged in the retaliatory conduct, the Defendant's response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached; and copies of any written complaint the Defendants written resolution thereof. While Defendant is not required to provide copies of the Awareline complaints in each report, the EEOC shall have the right to request all Awareline complaints once per year during the Term of this Agreement. The EEOC will hold any names provided by Home Depot in the above reports confidential pursuant to section 7a and 7c of FOIA (5 USC 552(b)((7)(c)). If someone requests these names from Home Depot, the EEOC will (i) assert the 7a and 7c exemptions and withhold production of the documents, Further, EEOC will notify Home Depot of any other formal efforts to obtain the individual names so that Home Depot may take any necessary legal action to prevent disclosure of these names.

b. Training: For each training program required under Section D of this Agreement, and conducted during the reporting period, Defendant shall submit a registry of attendance.

c. Posting of Notice: Defendant shall re-certify to the Commission, that the Notice required to be posted under Section E of this Agreement has been properly posted, or if removed, was promptly replaced, during the duration of the reporting period.

25. The Commission shall have the right to interview any personnel employed by Defendant in the Designated Group for the purpose of determining Defendant's

compliance with the terms of this Agreement. The Commission shall provide advance notice to Home Depot of any interviews of management employees or non-management employees during those employees' working hours.

G. Reference

26. Defendant agrees Ms. Hainline's termination code in its computer database shall be changed to reflect that she resigned her employment. In response to inquiries or requests for references concerning Ms. Hainline, Defendant will make available to Ms. Hainline a toll-free number through which prospective employers can certify her dates of employment, positions held, and final salary.

VI. RETENTION OF JURISDICTION AND FILING OF AGREEMENT

27. This Court shall retain jurisdiction of this cause for the Term for purposes of compliance with this Agreement and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees.

VII. ENFORCEMENT

28. There is no private right of action to enforce Defendant's obligations under the Agreement and only the Commission may enforce compliance herewith.

29. Enforcement may be had by the Commission petitioning the Court for enforcement of the terms of this Agreement.

VIII. EEOC AUTHORITY

30. With respect to matters outside the scope of this Agreement or charges not specifically resolved in Paragraphs 4 and 8 above, this Agreement shall in no way limit

the powers of the Commission to seek to eliminate employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority.

IX. COSTS AND ATTORNEY'S FEES

31. Except as specifically set forth herein, each party shall be responsible for and shall pay its own costs and attorney's fees.

X. NOTICE

32. Any notice, report, or communication required under the provisions of this Agreement shall be sent by certified mail, postage prepaid, to Mary Jo O'Neill, Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012.

SO ORDERED this ____ day of _____, 2009.

BY THE COURT:

United States District Judge

BY CONSENT:

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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

BY: Mary Jo O'Neil
Mary Jo O'Neil
Regional Attorney

BY: Erroy Cooper

Date: 7/14/09

Date: 7/29/09

APPROVED AS TO FORM:

Stephanie Struble 7/15/09
Stephanie Struble, Trial Attorney
Equal Employment Opportunity
Commission
303 East 17th Avenue, Suite 410
Denver, CO 80203
Telephone: (303) 866-1381

Dan Friesen
Daniel E. Friesen, Esq.
Hale Hackstaff Friesen, LLP
1430 Wynkoop Street, Suite 300
Denver, CO 80202
Telephone: (720) 904-6012

Attorney for Plaintiff EEOC

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

Exhibit A

Home Depot prohibits retaliation against any associate who has opposed, in good faith, discrimination or harassment made unlawful by Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act or the Americans with Disabilities Act. Home Depot also prohibits retaliation against any associate who has participated in the statutory complaint process by filing a Charge of Discrimination with a government agency, or testifying or assisting or participating in any manner in an employment discrimination proceeding, such as an investigation, proceeding, hearing or lawsuit involving Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act or the Americans with Disabilities Act.

Examples of activity protected under Home Depot's Non-Retaliation Policy include: complaining about discrimination or retaliation; requesting reasonable accommodation; threatening to file a Charge of Discrimination with a government agency; filing a Charge of Discrimination with a government agency; and serving as a witness during an investigation, by Home Depot or by a government agency, of a complaint of discrimination.

'Retaliation' means any action that might deter a reasonable person from opposing discrimination or participating in the statutory complaint process. Retaliatory conduct may include an action that impacts an employee at work, such as reassigning an employee to a less desirable position, scheduling changes, or termination. Retaliatory conduct may also include an action against a potential employee, such as refusing to hire an individual because he or she complained of discrimination, or an action against a

former employee, such as telling a potential employer who calls for a reference that the former employee complained of discrimination. Finally, retaliatory conduct may include an action that impacts an employee outside of work, such as an assault or filing unfounded civil or criminal charges against that person.

Home Depot takes complaints of retaliation very seriously. Anyone who condones or engages in retaliation in violation of Home Depot policy is subject to disciplinary action up to and including termination.

Exhibit B

NOTICE

The following notice is being posted pursuant to the terms of a Settlement Agreement reached between the parties in EEOC v. Home Depot U.S.A. Inc., d/b/a The Home Depot, filed in the United States District Court for the District of Colorado, Civil Action No. 06-cv-01950-LTB-CBS.

Home Depot wishes to emphasize the company's fundamental policy of providing equal employment opportunity in all of its operation and in all areas of employment practices, and to ensure that there shall be no retaliation against any employee who has opposed discrimination made unlawful by Title VII of the Civil Rights Act of 1964, or who has participated in the statutory complaint process by filing a Charge of Discrimination with a government agency, or testifying or assisting or participating in any manner in an employment discrimination proceeding, such as an investigation, proceeding, hearing or lawsuit involving Title VII of the Civil Rights Act of 1964.

Pursuant to Title VII of the Civil Rights Act of 1964, as amended, it is unlawful for an employer to retaliate against an employee because he or she has opposed discriminatory employment practices, or because he or she has participated in the statutory complaint process by filing a Charge of Discrimination with a government agency, or testifying or assisting or participating in any manner in an employment discrimination proceeding, such as an investigation, proceeding, hearing or lawsuit

Any employee who believes that he/she has been retaliated against for opposing unlawful employment discrimination, or for participating in the statutory complaint process, has the right to contact the EEOC directly at 303-866-1300. In compliance with federal law, no official at any Home Depot location will retaliate against an employee who makes an internal complaint of discrimination or who contacts the EEOC or its state counterpart.

This Notice shall remain posted for three years.

By: Emory Cooper Date: 7-24-09