

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

Brian Bailey,
Plaintiff,

v.

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

Case No. CV 12-08064-PCT-MHB

CONSENT DECREE

1. Plaintiff Brian Bailey commenced the above-captioned action in the United States District Court for the District of Arizona, alleging that the Defendant Home Depot U.S.A., Inc. (“Home Depot”) willfully violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). Mr. Bailey’s complaint alleged that Home Depot violated USERRA when it terminated him because of his military obligations with the California Army National Guard.

2. Home Depot denies each and every allegation of a violation of USERRA made against it in Mr. Bailey’s complaint.

3. Nevertheless, Mr. Bailey and Home Depot (collectively referred to as the “Parties”), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree (the “Decree”). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all

claims alleged in the Complaint filed in this case. By Mr. Bailey's signature to both this Decree and the "Release of all Claims" attached hereto as appendix A, Mr. Bailey accepts the terms of this Decree.

STIPULATIONS

4. Pursuant to USERRA, the Parties acknowledge the jurisdiction of the United States District Court for the District of Arizona over the subject matter of this action and the Parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

5. Venue is proper in this district for purposes of this Decree and any proceedings related only to this Decree. Home Depot agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

6. Having examined the terms and provisions of the Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Decree are fair, reasonable, and just. The rights of the Parties are protected adequately by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of USERRA and other applicable laws and will be in the best interests of the Parties.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

NON-ADMISSION

7. This Decree is being entered with the consent of the Parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by Home Depot of any violations of USERRA, or any other law, rule, or regulation dealing with, or in connection with, equal employment opportunities.

COMPLIANCE WITH USERRA

8. Home Depot reasserts its longstanding commitment of support for the military and for its employees who have served in the military. Home Depot shall continue to comply with all of the provisions of USERRA and shall not take any action against any person, including but not limited to Mr. Bailey, that constitutes retaliation or interference with the exercise of such person's rights under USERRA. It also shall not take any action against any person because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL AND INJUNCTIVE REQUIREMENTS

9. Without admitting the allegations set forth in the Complaint, and in settlement of all claims raised in this case, Defendant shall, within ten (10) business days from the date of entry of this Decree, pay Mr. Bailey the gross sum of \$45,000. This payment is inclusive of all claims for attorneys' fees and expenses. The payment shall be made in one lump sum, by check, mailed to Mr. Bailey by certified mail, return receipt requested, to the address that Mr. Bailey's attorney has provided to Home Depot.

10. Home Depot shall withhold all appropriate income tax and other statutory deductions associated with the amounts of this \$45,000 that the parties have agreed will be attributable to back pay and front pay, which total \$25,000. The remaining \$20,000 is not wage income and shall not be subject to tax withholding. Home Depot shall separately pay its portion of any Social Security tax and other applicable employer-side federal, state, or local taxes due on the back pay and front pay, and shall not deduct its portion of such taxes from the amount paid to Mr. Bailey. When Home Depot issues the check to Mr. Bailey, it should provide him with an itemized statement of the specific amounts withheld from the payment which are attributable to taxes and any other statutory deductions. Within the time required by law, Home Depot shall issue to Mr. Bailey all appropriate Internal Revenue Service ("IRS") tax forms reflecting the amounts paid to Mr. Bailey and the amounts withheld by Home Depot, including issuing to Mr. Bailey a W-2 wage and tax statement for the amounts attributable to back pay and front pay and, as appropriate, a 1099 MISC income statement.

1 11. Home Depot shall provide documentary evidence of its payment to Mr. Bailey,
2 including the itemized statement of the specific amounts withheld from the payment which are
3 attributable to taxes and other statutory deductions, by sending, within ten (10) calendar days of
4 its payment to Mr. Bailey, proof of payment via electronic mail to Allan Townsend at
5 Allan.Townsend@usdoj.gov.

6 12. In lieu of Mr. Bailey's reinstatement, Home Depot's records shall show that Mr.
7 Bailey resigned from Home Depot effective his last day of employment. All references in Mr.
8 Bailey's personnel records to his having been involuntarily terminated shall be removed within
9 ten (10) calendar days from the date of entry of this Decree.

10 13. Mr. Bailey agrees to refer any requests for an employment reference to Home
11 Depot's employment verification service at www.theworknumber.com or (1-800-367-5690) and
12 to provide Home Depot's Company code for this service, which is 87843. All such calls to the
13 verification service will be responded to with a neutral employment reference consisting solely
14 of information regarding the dates of Mr. Bailey's employment and positions held. Home Depot
15 shall instruct the district manager for the district where Mr. Bailey worked and the store manager
16 for the store where Mr. Bailey worked to refer any reference requests to the employment
17 verification service.

18 **TRAINING/RETRAINING REQUIREMENTS**

19 14. No later than thirty (30) calendar days from the entry of this Decree, Home Depot
20 shall implement an update to its policy for Military Leaves of Absence so that the policy
21 explicitly states that Home Depot "will take no adverse action against any associate or applicant
22 because of his/her need to take USERRA protected leave." Within sixty (60) calendar days of
23 the implementation of the revised policy, Home Depot shall review the new policy, in person,
24 with the district manager for the district where Mr. Bailey worked as well as all store managers
25 from that district (collectively the "Trainees").

26 15. All Trainees will sign a form acknowledging their receipt of the revised policy.
27 Home Depot will send copies of these signed forms via email to Allan Townsend at
28 Allan.Townsend@usdoj.gov.

DISPUTE RESOLUTION AND COMPLIANCE

16. Until the expiration of this Decree, this Court shall retain jurisdiction over this matter and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The Parties shall engage in good faith to resolve any dispute concerning compliance prior to seeking a resolution of such dispute by the Court. In the event of a dispute, the Parties shall give notice to each other ten (10) business days before moving for review by the Court. The Parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

MISCELLANEOUS

17. All Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

18. This Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action.

19. The terms of this Decree shall be binding upon the present and future directors, employees, agents, administrators, successors, representatives, and assigns of Home Depot and upon the heirs, successors, and assigns of Mr. Bailey.

20. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by all Parties.

EFFECTIVE DATE

21. The effective date of this Decree shall be the date upon which it is entered by the Court.

22. This Decree shall expire, and this action shall be dismissed, without further order from this Court either one year from the date that documentation of the monetary payment due to Mr. Bailey has been submitted to the United States, or the date by which Home Depot is required to provide pertinent tax documents to Mr. Bailey, whichever is later. The Parties agree,

however, that the terms of the Release of all Claims and Home Depot's obligations under paragraphs 12 and 13 do not expire, but rather shall survive the expiration of the other terms of the Decree.

23. Mr. Bailey may move the Court to extend the expiration date of this Decree for good cause shown if the relief provided in paragraphs 9 through 15 is not satisfactorily effectuated.

It is so ORDERED, this _____ day of _____, 2012.

UNITED STATES MAGISTRATE JUDGE

Agreed and consented to

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