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

Brian Bailey,
Plaintiff,

Case No. CV 12-08064-PCT-MHB

CONSENT DECREE

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

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

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

4 **STIPULATIONS**

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

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

12 **FINDINGS**

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

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

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

24 **NON-ADMISSION**

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

COMPLIANCE WITH USERRA

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

9 **REMEDIAL AND INJUNCTIVE REQUIREMENTS**

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

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

DISPUTE RESOLUTION AND COMPLIANCE

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

11 **MISCELLANEOUS**

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

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

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

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

22 **EFFECTIVE DATE**

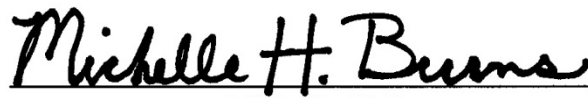
23 21. The effective date of this Decree shall be the date upon which it is entered by the
24 Court.

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

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

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

7 Dated this 23rd day of May, 2012.

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Michelle H. Burns
United States Magistrate Judge