

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

Civil Action No.:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

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

Defendant.

COMPLAINT and JURY TRIAL DEMAND

NATURE OF THE ACTION

This is a public enforcement action to correct the unlawful employment practice of retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. This action seeks to provide appropriate relief to Connie Hainline, who was adversely affected by such practice. Plaintiff, the U.S. Equal Employment Opportunity Commission (“EEOC”), contends Defendant Home Depot U.S.A. Inc., d/b/a The Home Depot (“Home Depot”) has discriminated against Connie Hainline by suspending and terminating her employment because she exercised her rights under Title VII by filing and resolving a charge of discrimination.

JURISDICTION AND VENUE

1. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 703(a), 704(a), 706(f)(1), 706(f)(3), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a), 2000e-5(f)(1), 2000e-5(f)(3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado.

PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and 706(f)(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been and is now doing business in the State of Colorado and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

GENERAL ALLEGATIONS

6. More than thirty days prior to the institution of this lawsuit, Connie Hainline (“Hainline”), a former employee of Defendant, filed a charge of discrimination with the EEOC alleging violations of Title VII by Defendant.

7. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. On or about March 13, 2002, Connie Hainline filed EEOC Charge No. 320-2002-

00891 against Home Depot, alleging discrimination based on gender and retaliation.

9. On or August 25, 2004, EEOC filed a lawsuit captioned *EEOC v. Home Depot*, Civil Action No. 04-cv-01776, consolidated with *Thompson v. Home Depot*, Civil Action No. 03-cv-00126, alleging that Home Depot discriminated against a class of individuals by maintaining a hostile work environment based on gender, national origin and race, and that the company retaliated against employees who complained of discrimination.

10. Concurrent with filing the EEOC lawsuit, Home Depot and EEOC entered into a Consent Decree, which included settlement of Ms. Hainline's claims.

11. During 2004, Ms. Hainline was employed by Home Depot as an Assistant Store Manager in its Evergreen, Colorado store.

12. On or about September 17, 2004, Ms. Hainline signed a settlement agreement with Home Depot agreeing to a monetary settlement and resolving Charge no. 320-2002-00891. On or about October 26, 2004, a representative of Home Depot signed its part of the aforementioned settlement agreement.

13. On September 24, 2004, the Court approved the Consent Decree resolving the claims asserted in the EEOC litigation, including Ms. Hainline's charge.

14. On or about November 2, 2004, Home Depot sent the three settlement checks to Ms. Hainline.

15. On November 24, 2004, Ms. Hainline was placed on administrative leave pending an investigation into alleged violations of Home Depot's alleged policies or practices.

16. At the time of the alleged violations in August 2004 and September 2004, Home Depot took no action to either investigate or to counsel Ms. Hainline about any alleged wrongdoing.

17. Ms. Hainline was discharged by Home Depot effective December 3, 2004, based on two alleged events in August and September 2004, which Home Depot has asserted were policy violations.

18. Until her discharge, Ms. Hainline's performance as an Assistant Store Manager at the Evergreen store had been satisfactory.

19. Several of the Home Depot representatives who participated in and made the termination decision, including District Manager, Jason Grasser, and Regional Human Resources Manager, Jean Farrington, knew that Ms. Hainline had filed a charge of discrimination, which was in the process of being resolved during the period from September 2004 to November 2004.

20. Ms. Hainline's suspension occurred approximately three weeks after Home Depot mailed her a settlement check.

21. Ms. Hainline was fired on or about December 3, 2004, by Home Depot, less than five weeks after receiving her settlement check.

22. On information and belief, no other Assistant Store Manager, other than Ms. Hainline, has been discharged for the same or similar alleged policy violations.

FIRST CLAIM FOR RELIEF

(Retaliation)

23. Since at least October, 2004, Defendant has engaged in unlawful retaliatory practices in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by suspending and terminating the employment of Ms. Hainline because she opposed discriminatory practices and participated in an EEOC proceeding.

24. The effect of the events described above has been to deprive Ms. Hainline of equal employment opportunities in retaliation for exercising her federally protected rights.

25. The unlawful employment practices described above were intentional.

26. The unlawful employment practices described above were done with malice or with reckless indifference to the federally protected rights of Hainline.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which retaliates against employees who complain about discrimination;

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for employees who exercise their federally protected rights to complain about discrimination and which eradicate the effects of its past unlawful employment practices;

C. Order Defendant to make whole Ms. Hainline by providing appropriate backpay with prejudgment interest, and other affirmative and equitable relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, rightful-place reinstatement or front pay;

D. Order Defendant to make whole Hainline by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including but not limited to job search expenses and medical expenses;

E. Order Defendant to make whole Ms. Hainline by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and humiliation;

F. Order Defendant to pay Ms. Hainline punitive damages for its malicious and/or

reckless conduct described above, in amounts to be determined at trial;

G. Order Defendant to provide training to its officers, managers and employees regarding discriminatory harassment and retaliation in the workplace;

H. Grant such further relief as the Court deems necessary and proper in the public interest; and

I. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Dated: September 29, 2006

Respectfully submitted,

RONALD S. COOPER
General Counsel

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights	PRISONER PETITIONS 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition	PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	
		LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.