

United States District Court, N.D. California.  
Vicki BUTLER, Susan Ellis, Felicia Funderburk, Jacqueline Genero, Sheryle Jones, Kimberly Stoddard, Cheryl Williams,  
and Jamie Wilson, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

HOME DEPOT, INC., Defendant.  
No. C94 4335 VRW.  
December 20, 1994.

Class Action Complaint for Injunctive and Declaratory Relief and Damages

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*CLASS ACTION*

*DEMAND FOR JURY TRIAL*

Individual and Representative Plaintiffs Vicki Butler, Susan Ellis, Felicia Funderburk, Jacqueline Genero, Sheryle Jones, Kimberly Stoddard, Cheryl Williams, and Jamie Wilson, (collectively "Plaintiffs") on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

***PRELIMINARY STATEMENT***

1. This is a class action brought by female employees of and applicants for employment with Defendant Home Depot, Inc. (hereinafter "Home Depot"), charging that Home Depot is guilty of a continuing policy and practice of denying employment, desirable job assignments, training and promotional opportunities, compensation and other terms and conditions of employment to its female employees in its Western Division. In general, Home Depot reserves the most desirable work assignments and positions, and the training necessary to achieve them and to advance within the company, for its male employees. In addition, Home Depot discriminates against its female employees in pay, working conditions and other terms of employment.

2. This action seeks an end to these discriminatory practices, an award of backpay and front pay, as well as damages and injunctive relief, including rightful place relief for all class members.

***JURISDICTION AND VENTTE***

3. This Court has jurisdiction over this action pursuant to [28 U.S.C. § 1331](#) (federal question), 42 U.S.C. §§ 2000(e), *et seq.*, Title VII of the Civil Rights Act of 1964, [42 U.S.C. § 1981](#), and [29 U.S.C. §§ 621, et seq.](#), the Age Discrimination in Employment Act of 1967. Pursuant to [28 U.S.C. § 1367](#), this Court has supplemental jurisdiction over Plaintiffs' claims under the California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#)

4. Venue is proper in this District pursuant to [28 U.S.C. § 1391\(b\)](#) (action not founded solely on the basis of diversity) and 42

U.S.C. § 2000(e)-[5\(f\)\(3\)](#). Members of the Plaintiff class reside throughout the United States, including the Northern District of California. Defendant Corporation Home Depot is a Georgia corporation, which is licensed to do business in California. Many of the acts complained of occurred in this District and gave rise to the claims alleged.

### ***PARTIES***

5. Plaintiff Vicki Butler is a resident of Sacramento County, California. She has been employed by Home Depot as a Sales Representative, in Sacramento County, since December 1992.

6. Plaintiff Susan Ellis is a resident of Yolo County, California. She has been employed by Home Depot as a Designer and Sales Representative, in Solano County, California, since October 1993.

7. Plaintiff Felicia Funderburk is a resident of Contra Costa County, California. She has been employed by Home Depot primarily as a Cashier, in Contra Costa County, since March 1992.

8. Plaintiff Jacqueline Genero is a resident of San Mateo County, California. She has been employed by Home Depot as a Cashier and Sales Representative, in San Mateo County, since February 1993.

9. Plaintiff Sheryle Jones is a resident of San Mateo County, California. She has been employed by Home Depot primarily as a Cashier, in San Mateo County since September 1992.

10. Plaintiff Kimberly Stoddard is a resident of Sacramento County, California. She was employed by Home Depot as a Sales Representative, in Sacramento County, from February 1993 to August 1993.

11. Plaintiff Cheryl Williams is a resident of Riverside County, California. She was employed by Home Depot as a Sales Representative, in Riverside County, from November 1993 to May 1994.

12. Plaintiff Jamie Wilson is a resident of Contra Costa County, California. She was denied employment at Home Depot, in Contra Costa County, in or about January 1994.

13. Defendant Home Depot, Inc., is a Georgia corporation which maintains offices and is doing business in California and in this federal district. At all relevant times, Defendant Home Depot, Inc., has been an employer within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-[5\(b\)](#), and the California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#)

14. All plaintiffs herein were employed by or applied for employment within Home Depot's Western Division, which is headquartered in Fullerton, California, and which encompasses the San Francisco Bay Area, as well as other areas throughout California, Arizona, Nevada, New Mexico, Oregon, Utah and Washington.

### ***CLASS ACTION ALLEGATIONS***

15. Plaintiffs bring this Class Action pursuant to [Fed. R. Civ. P. 23\(a\), \(b\)\(2\), and \(b\)\(3\)](#) on behalf of a class of all female past, present, and future employees and applicants in Home Depot's Western Division who have been, continue to be, or in the future may be denied employment, desirable job and department assignments, training, promotional opportunities, desirable hours, compensation and/or other terms and conditions of employment on the basis of their gender.

16. Plaintiffs are members of the class they seek to represent.

17. The members of the class identified are so numerous that joinder of all members is impracticable. The number of class

members is indeterminate at the present time but is larger than can be addressed by joinder. There are approximately 99 Home Depot stores in the Western Division, with scores of employees in each store.

18. There are questions of law and fact common to the class which predominate over any questions affecting only individual members, including without limitation, whether Defendant violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*, and the California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#), as alleged herein, under either disparate treatment or disparate impact theories.

19. The claims of the named Plaintiffs are typical of the claims of the class.

20. The named Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. Plaintiffs have retained counsel competent and experienced in complex class actions and employment discrimination litigation.

21. Class certification is appropriate under [Fed. R. Civ. P. 23\(b\)\(3\)](#) because questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Each member of the class has been damaged and is entitled to recovery by reasons of the common, uniform, unfair personnel policies, practices, and procedures of Home Depot. Home Depot's discriminatory compensation and personnel policies are uniform throughout its Western Division. On information and belief, Home Depot has uniform computerized payroll and personnel data that will make calculation of damages for specific class members relatively simple. Finally, the appropriateness and the amount of punitive damages are issues common to the class.

22. Class certification is also appropriate pursuant to [Fed. R. Civ. P. 23\(b\)\(2\)](#) because Defendant has acted and/or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the class as a whole.

### ***CLAIMS OF NAMED PLATNTIFFS***

#### ***Vicki M. Butler***

23. Plaintiff Vicki Butler, a female, has been employed by Home Depot as a Sales Representative at Store Number 651 at 4641 Florin Road, Sacramento, California, since she was hired on December 7, 1992.

24. Prior to her employment with Home Depot, Ms. Butler received an Associate of Arts degree in environmental design and received a Bachelor of Science degree in plant science from the University of California at Davis. She served in the United States Air Force as an aircraft mechanic. Ms. Butler had extensive experience working as a handyperson, with electrical, plumbing, carpentry, and sheetrocking experience. She had also supervised employees in a previous position as a greenhouse manager. Ms. Butler is currently a Sales Representative in the Inside Garden Department of Home Depot Store Number 651.

25. Since she began working at Home Depot, Ms. Butler has been asked to assume different and less desirable work responsibilities than similarly-situated males. Although Ms. Butler was hired as a Sales Representative, she was asked to work as a Cashier during the holiday season in her first weeks at Home Depot. A male employee who was hired as a Sales Representative by Home Depot at the same time as Ms. Butler was not asked to work as a Cashier.

26. Ms. Butler has been denied training, promotions, and compensation on the basis of her gender during her employment at Home Depot. For example, in approximately June 1994, a male working in the same capacity, who had less seniority at Home Depot and considerably less practical experience than Ms. Butler, was selected by store management to participate in a six-week management training program. Completion of the management training program is a prerequisite to promotion to management at Home Depot. Because of her gender, Ms. Butler was not offered training for promotion to managerial positions which are predominantly staffed by male employees at Home Depot.

27. Despite Ms. Butler's qualifications, educational background, and previous managerial experience, she was denied promotional opportunities to managerial positions offered to similarly-situated male employees. On November 11, 1994, a less qualified male employee, with less seniority at Home Depot, less practical experience, and little or no relevant educational background as compared to Ms. Butler, was promoted to Department Head of the Inside Garden Department. Because of her gender, Ms. Butler has been denied the opportunity to work in managerial positions that are predominantly staffed by male employees at Home Depot.

28. Defendant Home Depot has discriminated against Ms. Butler on account of her sex as follows:

- (a) By failing and refusing to consider her for promotional opportunities on the same basis as males are considered;
- (b) By failing and refusing to provide her with promotional opportunities on the same basis as males to positions that are more desirable and more likely to lead to greater advancement with the company;
- (c) By failing to provide her with training and work experience to qualify her for promotional opportunities on the same basis as such training and experience is provided to males;
- (d) By failing to provide her with timely and accurate notice of employment opportunities;
- (e) By relying on subjective selection criteria and decision making by a nearly all male managerial force to deny her promotional opportunities;
- (f) By promoting similarly-situated males more rapidly than her;
- (g) By discouraging her from seeking promotional opportunities; and
- (h) By imposing work on her in areas traditionally reserved for female employees that has not been imposed on similarly-situated males.

29. On or about December 14, 1994, Ms. Butler filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"). Attached to this Complaint as Exhibit A, and incorporated by reference, is a copy of that charge. Ms. Butler has requested a Notice of Right to Sue from the EEOC.

***Susan L. Ellis***

30. Plaintiff Susan Ellis, a female whose date of birth is XX/XX/1950, began working for Defendant Home Depot as a Designer at Store Number 637, at 2121 Cadenasso Drive, Fairfield, California, on October 18, 1993.

31. Prior to her employment with Home Depot, Ms. Ellis had worked as a private contractor designer for eighteen years, with extensive experience in high-end design projects. Ms. Ellis had received degrees in both art and art history. Ms. Ellis is currently a kitchen/cabinet Designer in the Plumbing Department of Home Depot Store Number 637.

32. During her employment with Home Depot, Ms. Ellis has been denied training necessary for promotion, as well as promotional opportunities and compensation, which have been given to similarly-situated males and younger employees. At her performance review in May 1994, she was denied a raise, despite the fact that she had performed well in sales and customer satisfaction. Upon information and belief, Ms. Ellis is paid a lower salary than similarly-situated males.

33. Ms. Ellis has regularly been subjected to a sexually hostile work environment and sexually harassing conduct. Such sexually hostile and harassing work environment was created and includes conduct by Home Depot managers who have subjected her to vulgar, derogatory, and offensive sexual language. For example, in approximately July 1994, while employees at Store 637 were attending a mandatory screening of a tape on sexual harassment, a photograph of several assistant managers with a nude woman was placed on the table in the employee conference room. On or about November 1, 1994, a male Department Head asked her, "How are you today?" When she responded, "I have a sinus infection, I don't feel good," the male Department Head stated, "Thank God you don't have a yeast infection." On or about November 8, 1994, a male Department Head stated loudly and repeatedly to a female employee, "I feel so frisky." Although Ms. Ellis brought such incidents to the attention of store management, nothing was done to address or punish the offensive conduct.

34. Ms. Ellis has been subjected to retaliation for complaining about the harassment and discrimination she has experienced. On December 14, 1994, store management requested that a male Sales Representative in her department record any errors made by her. Upon information and belief, the male Sales Representative has even searched Ms. Ellis' drawer and files looking for any evidence of her errors.

35. Defendant Home Depot has discriminated against Ms. Ellis on account of her sex and age as follows:

(a) By failing and refusing to consider her for promotional opportunities on the same basis as males and/or younger employees are considered;

(b) By failing to provide her with training and work experience to qualify her for promotional opportunities on the same basis as such training and work experience is provided to males and/or younger employees;

(c) By not evaluating her performance and/or considering her for promotional opportunities on the same basis as similarly-situated males and/or younger employees;

(d) By discouraging her from seeking promotional opportunities traditionally afforded only to males and/or younger employees;

(e) By constructively denying her promotion to more desirable positions while promoting males and/or younger employees of lesser qualifications and seniority;

(f) By denying her wages and compensation equal to that of similarly-situated males and/or younger employees;

(g) By failing to provide her with desirable shifts, hours of work, and job assignments on the same basis as males and/or younger employees;

(h) By subjecting her to a sexually hostile and sexually harassing work environment; and

(i) By retaliating against her when she complained of the above discriminatory treatment.

36. On or about December 15, 1994, Ms. Ellis filed a charge of discrimination with the EEOC and the DFEH. Attached to this Complaint as Exhibit B, and incorporated by reference, is a copy of that charge. Ms. Ellis has requested a Notice of Right to Sue from the EEOC.

***Felicia Funderburk***

37. Plaintiff Felicia Funderburk, an African-American female, has been employed primarily as a Cashier at the Home Depot stores in Concord and Pleasanton, California, since March 1992. Prior to her employment with Home Depot, Ms. Funderburk

had several years of retail experience with Pak 'N Save.

38. On numerous occasions, Ms. Funderburk has been denied promotional opportunities by Home Depot on the basis of her sex and race. These promotional opportunities include, but are not limited to, Sales Representative positions that were given to males and/or non-African Americans. For example, in October 1992, Ms. Funderburk requested assignment to any Sales Representative position available. She was told she was not eligible for such a position because she had not been with the company long enough. However, Ms. Funderburk observed white males hired directly for sales positions or promoted with less seniority than her from cashier to sales positions. In April 1994, Ms. Funderburk inquired again about a sales position. At the time, there were sales openings in the "Light Cloud" Department, Paint Department and Design Center. The Light Cloud position was filled by a male employee from the Electrical Department; a male was hired off the street for the Paint Department; and a white female was hired off the street for the Design Center position (which traditionally has been held by women). Around the same time, Ms. Funderburk was told by a Home Depot manager that Home Depot did not want females in the Hardware Department.

39. Ms. Funderburk has also been deterred from applying for promotions to department head and managerial level positions at Home Depot due to the apparent segregation of jobs by gender and because she has been told by management that "Women can't be Department Heads because they bitch and whine too much."

40. Home Depot has continually discriminated against Ms. Funderburk on the basis of her sex and/or race as follows:

(a) By failing and refusing to provide her with promotional opportunities, including but not limited to Sales Representative positions at Home Depot on the same basis as males and/or non-African Americans;

(b) By failing to provide her with work experience and training on the same basis as males and/or non-African Americans;

(c) By failing to provide her with desirable shifts, hours of work, and job assignments on the same basis as males and/or non-African Americans;

(d) By placing her in sex-segregated, predominantly female jobs and failing to and refusing to place her in predominantly male jobs;

(e) By denying her wages and compensation equal to that of similarly-situated males and/or non-African Americans; and

(f) By discouraging her from applying for positions traditionally afforded only to males.

41. Ms. Funderburk filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"), which is incorporated by reference and attached hereto as Exhibit C. Ms. Funderburk has received a Notice of Right to Sue from the EEOC.

### ***Jacqueline Genero***

42. Plaintiff Jacqueline Genero, a female, has been employed at the Home Depot store in Colma, California, since February 9, 1993. Ms. Genero had extensive retail experience before starting work at Home Depot, including hardware and tool sales at Sears. Despite her prior experience and expressed interest in sales, Ms. Genero was initially assigned as a Cashier. In April 1993, Ms. Genero was transferred, without increase in pay, to the traditionally female position of Sales Representative in the Design Center Department. Ms. Genero was transferred back to Cashier in November 1993, and has held a variety of traditionally female jobs at Home Depot since that time.

43. On numerous occasions, Ms. Genero has been denied promotional opportunities that were given to males, including but

not limited to Sales Representative positions in the Tool Department and the Lumber Department in May 1994.

44. Plaintiff Genero has been subjected to a sexually hostile work environment and sexually harassing conduct. Such sexually hostile and harassing work environment was created by and includes conduct by Home Depot managers who have subjected Ms. Genero to continual uninvited and offensive sexual attention, including but not limited to propositions to engage in sexual activities, vulgar, derogatory and offensive sexual language, and repeated, unwanted telephone calls to her home, which continued despite complaints to management.

45. Home Depot has continually discriminated against Ms. Genero on the basis of her sex as follows:

(a) By failing and refusing to provide her with promotional opportunities, including but not limited to Sales Representative positions at Home Depot on the same basis as males;

(b) By failing to provide her with timely and accurate notice of employment opportunities;

(c) By failing to provide her with work experience and training on the same basis as males;

(d) By failing to provide her with desirable shifts, hours of work, and job assignments on the same basis as males;

(e) By placing her in sex-segregated, predominantly female jobs and failing to and refusing to place her in predominantly male jobs;

(f) By denying her wages and compensation equal to that paid to similarly-situated males for the same work; and

(g) By subjecting her to a sexually hostile work environment and sexually harassing conduct.

46. Ms. Genero filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"), which is incorporated by reference and attached hereto as Exhibit D. Ms. Genero has received a Notice of Right to Sue from the EEOC.

### *Sheryle Jones*

47. Plaintiff Sheryle Jones, a female, has been employed at the Home Depot store located at 91 Colma Boulevard, in Colma, California, since September 14, 1992. Prior to her employment with Home Depot, Ms. Jones had extensive retail experience, including nearly 10 years of retail employment at Gemco and Lucky Stores. Ms. Jones is currently a Cashier at the Home Depot in Colma.

48. Ms. Jones has been denied training, promotions, job assignments, and compensation on the basis of her sex during her employment at Home Depot. Ms. Jones has repeatedly been denied an opportunity to work as a Sales Representative, including but not limited to denial of a Sales Representative position in the Lumber Department in May 1994. In response to her request for a Sales Representative position, Ms. Jones was told by the Lumber Department Manager: "There is no way Home Depot would put a female in Lumber." Shortly thereafter, a less qualified male cashier was placed in the Lumber Department Sales Representative position. There was no job posting or application process for this position.

49. Ms. Jones has repeatedly been denied an opportunity to work on the sales floor performing stocking duties. Stocking duties include working with inventory and provide experience for promotion to Sales Representative positions. Male cashiers are routinely permitted to work at stocking as time permits. When Ms. Jones has requested an opportunity to stock, she has been told instead to dust the merchandise. Dusting is an unskilled job duty that does not provide on-the-job training leading to promotional opportunities.

50. Ms. Jones has repeatedly requested the opportunity to attend on-site product knowledge classes, a prerequisite for advancement at Home Depot, and to be provided with forklift training. Male employees have been permitted to attend these on-site classes and to receive such training. Ms. Jones has been denied the opportunity to attend on-site product knowledge classes and to receive forklift training due to her gender.

51. Ms. Jones has been channelled into jobs predominantly staffed by females, such as the cashier position. Ms. Jones has been told by Home Depot managerial staff that women should be “up front,” *i.e.*, on the cashier line, as opposed to on the sales floor or in managerial positions that are predominantly staffed by male employees at Home Depot.

52. Ms. Jones has been denied wages and compensation equivalent to that of similarly-situated male employees. For example, in 1994, while Ms. Jones was working in Special Orders, she received a performance evaluation rating of 3 on a scale ranging from 1-4 and a \$.30 per hour pay increase. Conversely, a male employee working in the same capacity, who had less seniority at Home Depot and considerably less overall cashier experience compared to Ms. Jones, also received a performance evaluation rating of 3, but received a pay increase of \$.50 per hour.

53. Ms. Jones has been subject to a sexually hostile work environment and sexually harassing conduct. Such sexually hostile and harassing environment was created by and such conduct includes managerial staff making inappropriate, unwanted and offensive sexual remarks to her and to other female employees in her presence, and a manager making unwanted sexual advances toward her.

54. Home Depot has continually discriminated against Ms. Jones on the basis of her gender as follows:

(a) By failing and refusing to provide her with promotional opportunities on the same basis as males to positions that are more desirable and more likely to lead to greater advancement with the company;

(b) By failing to consider her for promotional opportunities on the same basis as males are considered;

(c) By relying on subjective selection criteria and decision making by a nearly all male managerial force to deny her promotional opportunities;

(d) By failing to provide her with formal, informal and on-the-job training opportunities on the same basis as males;

(e) By denying her wages and compensation equal to that paid to similarly-situated males for the same work;

(f) By channelling her into lower paying, deadend jobs reserved only for females; and

(g) By subjecting her to a sexually hostile work environment and sexually harassing conduct.

55. Ms. Jones filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) and the California Department of Fair Employment and Housing (“DFEH”), which is incorporated by reference and attached hereto as Exhibit E. Ms. Jones has received a Notice of Right to Sue from the EEOC.

***Kimberly Stoddard***

56. Plaintiff Kimberly Stoddard, a female, was employed by Home Depot as a Sales Representative at Store Number 651, at 4641 Florin Road, Sacramento, California 95820, from February 8, 1993 to August 14, 1993.

57. Prior to her employment with Home Depot, Ms. Stoddard had received her certification as a journeyman/tile setter



from the Northern California State Apprenticeship School in 1986, and her ceramic tile contractors license for California in 1988. She had also worked for approximately 12 years as a tile finisher, tile setter, and ceramic tile contractor. From 1988 to February 1993, when Ms. Stoddard began working at Home Depot, Ms. Stoddard had begun and had owned a contracting business which engaged in meeting with customers, bidding for jobs and installing ceramic tile, marble, and glass block. While employed by Home Depot, Ms. Stoddard was a Sales Representative in the Floor and Wall Department.

58. Ms. Stoddard completed her 90-day probationary period, and received uniformly positive written reviews between her 90-day and six-month reviews.

59. Ms. Stoddard was denied compensation offered to similarly-situated male employees. For example, she received a lower starting salary than similarly-situated males. In addition, she was denied merit badges and compensation for the approximately 200 help letters submitted on her behalf by customers who had attended one of her weekly tile installation clinics. Under Home Depot's employee recognition program, merit badges are given to an employee when customers complete and submit letters commending the employee. After receiving five merit badges, an employee is entitled to a bonus of \$65.00. Ms. Stoddard was denied the recognition and compensation because of her gender.

60. Ms. Stoddard was denied desirable shifts and promotional opportunities provided to similarly-situated male employees. Although she was informed that she was the expert, or "Bernie Girl," for the Floor and Wall Department, after approximately a two-week period she was not given the 6:30 a.m. to 3:30 p.m. shift that all other experts, or "Bernie Boys," received. No other female employees were department experts, or "Bernie Girls," at the Sacramento store.

61. Ms. Stoddard was subjected to different performance standards than similarly-situated male employees and was denied salary increases on the basis of her gender. On August 13, 1993, Ms. Stoddard received her six-month review. In the review, she received an evaluation in the range of good to excellent on more than 70% of the areas evaluated. In addition, her file reflected that Ms. Stoddard's supervisor, the Assistant Store Manager over the Floor and Wall Department, reported: "Kim has done a great job as our site tile expert and has also successfully put together a contractor breakfast and meeting to bring in business and boost sales." Prior to the review, Floor and Wall Department Head Wade Watkins had even noted that Ms. Stoddard gave "the best clinics ever in the whole store." Despite Ms. Stoddard's positive evaluations, she received a poor performance rating of 2, and was denied a pay increase.

62. On August 14, 1993, the day after Ms. Stoddard's six-month performance review, she was constructively discharged on the basis of her gender when she realized that she would not receive promotional opportunities, salary increases, or recognition necessary for promotion on the same basis as similarly-situated male employees at Home Depot. During the time she was employed by Home Depot, there were no female Department Heads at the Sacramento store.

63. Defendant Home Depot has discriminated against Ms. Stoddard on account of her sex as follows:

- (a) By denying her wages and compensation equal to that paid to similarly-situated males for the same work;
- (b) By denying her pay increases provided to similarly-situated males;
- (c) By relying on subjective selection criteria and decision making by a nearly all male managerial force to deny her promotional opportunities;
- (d) By discouraging her from seeking promotional opportunities;
- (e) By failing to provide her with desirable shifts, hours of work, and job assignments on the same basis as males; and
- (f) By constructively discharging her on or about August 14, 1993, because of her sex.

64. On or about November 5, 1993, Ms. Stoddard filed a charge of discrimination with the EEOC and the DFEH. Attached to this Complaint as Exhibit F, and incorporated by reference, is a copy of that charge. Ms. Stoddard has received a Notice of Right to Sue from the EEOC.

### *Cheryl Williams*

65. Plaintiff Cheryl Williams, an African-American female whose date of birth is XX/XX/1953, was employed at the Home Depot store in Corona, California, from November 1993 until May 19, 1994. Prior to her employment with Home Depot, Ms. Williams had approximately one year of experience in retail floor and tile sales. While employed by Home Depot, Ms. Williams was a Sales Representative in the Floor and Wall Department.

66. Ms. Williams began her employment with Home Depot on November 22, 1993. She was assigned as a Sales Representative to the Floor and Wall Department. She was one of only a few African-American and female Sales Representatives employed by Home Depot at the Corona store. Additionally, Ms. Williams was only one of very few African-American employees employed in any position by Home Depot at the Corona store.

67. Ms. Williams satisfactorily completed her 90-day probationary period. At her six-month review in April 1994, she was advised in writing that she was doing a "Good Job!" and was given a 6.6% pay increase.

68. In late April or early May 1994, Ms. Williams was asked to train two Caucasian male employees, one who was approximately 22 years old and the other who was approximately 35 years old. It was Ms. Williams' understanding that these male employees had been hired on a part-time basis and that neither had any prior experience in floor and wall sales.

69. On May 19, 1994, Ms. Williams, without notice or cause, was advised by two Home Depot managers that her position had been eliminated and that she was terminated, effective immediately. To Ms. Williams' knowledge, her position was the only one eliminated and she was the only employee terminated at that time. To Ms. Williams' knowledge, the two younger, white males she had been asked to train assumed her job duties and responsibilities.

70. While she was employed by Home Depot, Ms. Williams was denied compensation equal to that of similarly-situated males and/or non-African American employees. For example, although Ms. Williams was informed that she was the expert or "Depot Don" for the Floor and Wall Department, she was the lowest-paid employee in the department. She was the only female and African-American employee in her department.

71. While she was employed by Home Depot, Ms. Williams was denied work hours and shifts afforded to similarly-situated male and/or non-African American employees. For example, although Ms. Williams was informed that she was the expert or "Depot Don" for the Floor and Wall Department, she was not given the 6:00 a.m. to 3:00 p.m. shift that all other experts, or "Depot Dons," received. No other females or African-American employees were department experts, or "Depot Dons," at the Corona Home Depot.

72. Home Depot has continually discriminated against Ms. Williams on the basis of her sex, race and/or age as follows:

(a) By terminating her without cause and replacing her with two younger, white male employees; and

(b) By denying her wages and compensation and other terms and conditions of employment afforded to similarly-situated non-African Americans, males, and/or younger employees.

73. Ms. Williams filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"), which is incorporated by reference

and attached hereto as Exhibit G. Ms. Williams has requested a Notice of Right to Sue from the EEOC.

*Jamie Wilson*

74. Plaintiff Jamie Wilson, a female, applied for employment with Home Depot's El Cerrito, California, store in or around January 1994. Prior to her application with Home Depot, Ms. Wilson had extensive retail sales and managerial experience. During her initial application interview with Home Depot, Ms. Wilson was advised to put "check/cashier" on her application form, despite her qualifications, experience and interest in sales/managerial positions. During a second interview with a male whom Ms. Wilson believed to be a Home Depot manager, Ms. Wilson was asked what her employment goals were. When she replied that she desired to be a manager, the interviewer became upset and informed Ms. Wilson that she lacked experience required for such a position at Home Depot. The interviewer then ended the interview in a manner that made it clear to Ms. Wilson that she was being rejected for employment in any position at Home Depot.

75. Home Depot discriminated against Ms. Wilson by denying to her on the basis of her gender employment for a position offered to male applicants for which she was qualified.

76. Ms. Wilson has filed a timely charge of discrimination with the California Department of Fair Employment and Housing ("DFEH"), which is incorporated by reference and attached hereto as Exhibit H. Ms. Wilson has requested a Notice of Right to sue from the DFEH.

**GENERAL PATTERNS OF DISCRIMINATION**

77. The denials and abridgments of employment opportunities suffered by Plaintiffs are not isolated examples of Home Depot's employment practices. Rather, they are illustrative of the pervasive pattern of sex discrimination in employment opportunities that has continually existed in Home Depot's Western Division.

78. The under-representation of women in Defendant Home Depot's most desirable positions is not random or coincidental, but results from discrimination in training, job assignments, promotional opportunities, pay, and standards of evaluation, and from the policy and practice of Defendant Home Depot in discriminating against women in employment opportunities in its Western Division.

79. Home Depot has pursued policies and practices on a continuing basis which have had the effect of denying equal job opportunities to qualified women. Such policies and practices include, without limitation:

- (a) Reliance upon unweighted subjective, gender-based and/or arbitrary criteria utilized by a nearly all male managerial workforce in making assignment, training, and promotional decisions;
- (b) Failure to follow a uniform job posting procedure to guarantee that all employees have notice of openings, even though promotions have generally been filled by Home Depot employees;
- (c) Use of pretextual and shifting "qualifications" and requirements for training and job opportunities which are different for males than for females;
- (d) Maintenance of largely sex-segregated job categories;
- (e) Discouraging females from applying for management positions;
- (f) Failing and refusing to consider females for promotion on the same basis as males are considered;

- (g) Failing and refusing to provide females the necessary work experience and training to qualify them for more desirable positions on the same basis as males are provided it;
- (h) Failing and refusing to promote females on the same basis as males are promoted;
- (i) Failing to provide females with accurate notice of employment opportunities and hiring procedures;
- (j) Maintaining and fostering a reputation for discriminatory conduct which deters females from pursuing promotional opportunities with Home Depot;
- (k) Establishing and maintaining arbitrary and subjective requirements for job assignment and promotion which have the effect of excluding qualified women and which have not been shown to have any significant relationship to job performance or to be necessary to the safe and efficient conduct of Defendant's business;
- (l) Placing females in sex-segregated operational positions with fewer promotional opportunities, while placing males into more desirable floor positions with greater opportunities for advancement;
- (m) Paying females lower salaries than similarly-situated males;
- (n) Denying females more desirable work hours and work shifts;
- (o) Failing and refusing to take reasonable and adequate steps to eliminate the effects of Defendant's past discriminatory practices; and
- (p) Refusing to hire qualified female applicants.

80. As a result of Defendant's continued policies and practices of intentional discrimination and pursuit of policies and practices with an adverse impact upon women, there are in fact two different work forces in Home Depot's Western Division. One, primarily male, work force enjoys preferential treatment, better job opportunities, and a swift path to advancement. This work force dominates all management positions. The other, primarily female, work force holds a disproportionate share of the lowest level positions, and only a fraction of this work force has been allowed to advance to better positions.

81. The two work forces are further illustrated by Home Depot's general policy and practice of placing females in sex-segregated operational positions with fewer promotional opportunities, and placing males into floor positions with greater opportunities for advancement into managerial positions.

#### ***FIRST CLAIM FOR RELIEF***

**(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*)**

82. Plaintiffs incorporate Paragraphs 1 through 81.

83. This claim is brought on behalf of all Plaintiffs and the class they represent.

84. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*

85. Plaintiffs Funderburk, Genero, Jones, and Stoddard have received Right to Sue letters from the EEOC, and have commenced this action in a timely manner. Plaintiffs Butler, Ellis, and Williams have each requested a Notice of Right to Sue

from the EEOC. Plaintiffs have therefore exhausted their administrative remedies and fulfilled all conditions precedent to suit.

86. Plaintiffs request relief as hereinafter provided.

***SECOND CLAIM FOR RELIEF***

**(California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#))**

87. Plaintiffs incorporate Paragraphs 1 through 86.

88. This claim is brought on behalf of all Plaintiffs and the class they represent.

89. The foregoing conduct violates the California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#)

90. Plaintiffs Butler, Ellis, Funderburk, Genero, Jones, Stoddard, and Williams have received Right to Sue letters from the DFEH. Plaintiff Wilson has requested a Notice of Right to Sue from the DFEH. The pendency of the EEOC investigations into Plaintiffs' charges tolled the time limits for filing civil actions pursuant to the Fair Employment and Housing Act. Plaintiffs have therefore timely complied with all prerequisites to suit.

91. Plaintiffs request relief as hereinafter provided.

***THIRD CLAIM FOR RELIEF***

**([42 U.S.C. § 1981](#))**

92. Plaintiffs incorporate Paragraphs 1 through 91.

93. This claim is brought on behalf of Plaintiffs Funderburk and Williams only.

94. The foregoing conduct constitutes intentional racial discrimination in violation of [42 U.S.C. § 1981](#).

95. Plaintiffs Funderburk and Williams request relief as hereafter provided.

***FOURTH CLAIM FOR RELIEF***

**(Age Discrimination in Employment Act of 1967, [29 U.S.C. §§ 621, et seq.](#))**

96. Plaintiffs incorporate Paragraphs 1 through 95.

97. This claim is brought on behalf of Plaintiffs Ellis and Williams only.

98. The foregoing conduct violates the Age Discrimination in Employment Act of 1967, [29 U.S.C. §§ 621, et seq.](#)

99. Plaintiffs Ellis and Williams request relief as hereafter provided.

***RELIEF ALLEGATIONS***

100. Plaintiffs and the class they represent have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and omissions.

101. The actions on the part of Defendant have caused and continue to cause Plaintiffs and all class members substantial losses in earnings, promotional opportunities and other employment benefits, and have caused Plaintiffs and all class members to suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

102. Defendant did the acts herein alleged maliciously, fraudulently, and oppressively, and with wrongful intention of injuring Plaintiffs and all class members, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiffs' and class members' rights. Plaintiffs and class members are thus entitled to recover punitive damages in an amount according to proof.

### ***PRAYER FOR RELIEF***

**WHEREFORE**, Plaintiffs and the class pray for relief as follows:

1. Certification of the case as a class action on behalf of the proposed Plaintiff class and designation of Plaintiffs as representatives of the class and their counsel of record as Class Counsel;
2. All damages which individual Plaintiffs and the class have sustained as a result of Defendant's conduct, including backpay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the discriminatory practices of Defendant, and for emotional distress, humiliation, embarrassment, and anguish, according to proof;
3. Exemplary and punitive damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;
4. Liquidated damages in addition to backpay for violation of the Age Discrimination in Employment Act of 1967 on behalf of Plaintiffs Ellis and Williams.
5. A preliminary and permanent injunction against Defendant and its partners, officers, owners, agent, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;
6. A declaratory judgment that the practices complained of herein are unlawful and violative of 42 U.S.C. §§ 2000(e), *et seq.*, Title VII of the Civil Rights Act of 1964, [42 U.S.C. § 1981](#), [29 U.S.C. §§ 621, et seq.](#), the Age Discrimination in Employment Act of 1967, and the California Fair Employment and Housing Act, [Government Code §§ 12940, et seq.](#)
7. An order restoring class members to their rightful positions at Home Depot, or in lieu of reinstatements, an order for front pay benefits;
8. An assignment of Plaintiffs and the class to those jobs they would now be occupying but for Defendant's discriminatory practices;
9. An adjustment of the wage rates, benefits, and seniority rights for Plaintiffs and the class to that level which Plaintiffs and the class would be enjoying but for Defendant's discriminatory practices;

10. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;
11. Pre-Judgment and Post-Judgment interest, as provided by law; and
12. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

DATED: December 19, 1994

Respectfully submitted,  
LIEFF, CABRASER & HEIMANN  
Elizabeth J. Cabraser  
James M. Finberg  
Michael F. Ram  
Kelly M. Dermody  
By: <<signature>>  
James M. Finberg  
SAPERSTEIN MAYEDA & GOLDSTEIN  
A Professional Corporation  
Guy T. Saperstein  
Barry L. Goldstein  
Teresa Demchak  
David Borgen  
By: <<signature>>  
Barry L. Goldstein  
Plaintiff Class Co-Counsel

***DEMAND FOR JURY TRIAL***

Plaintiffs hereby demand a jury trial for all individual and class claims so triable.

DATED: December 19, 1994

Respectfully submitted,  
LIEFF, CABRASER & HEIMANN  
Elizabeth J. Cabraser  
James M. Finberg  
Michael F. Ram  
Kelly M. Dermody  
By: <<signature>>  
James M. Finberg  
SAPERSTEIN MAYEDA & GOLDSTEIN  
A Professional Corporation  
Guy T. Saperstein

Barry L. Goldstein

Teresa Demchak

David Borgen

By: <<signature>>

Barry L. Goldstein

Plaintiff Class Co-Counsel

Vicki BUTLER, Susan Ellis, Felicia Funderburk, Jacqueline Genero, Sheryle Jones, Kimberly Stoddard, Cheryl Williams, and Jamie Wilson, on behalf of themselves and all others similarly situated, Plaintiffs, v. HOME DEPOT, INC., Defendant.  
1994 WL 16515435 (N.D.Cal. ) (Trial Pleading )

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