

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-cv-1776-WYD-BNB

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

HOME DEPOT U.S.A. INC. doing business as
The Home Depot, a Delaware corporation,

Defendant.

EEOC'S UNOPPOSED MOTION TO AMEND CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") moves to amend paragraphs 47.02, 47.03, and 47.04 of the Consent Decree, to provide for Claimants' Requests for Review to be submitted directly to and decided by the EEOC. Additionally, the EEOC requests that the time for sending Claimant notices be extended to September 30, 2005. In support thereof, the EEOC states:

1. Pursuant to the Consent Decree entered by the court on September 24, 2004, the parties retained the firm of Settlement Services, Inc. to administer the class claim process. Notices of class settlement were sent on January 28, 2005, and the deadline for submission of claims was May 1, 2005. The Administrator received over 1,000 claims. The Administrator evaluated all claims received on or before the filing deadline of May 2, 2005, and provided its recommendations in the form of two lists – claims approved and claims denied. The Administrator did not evaluate the 105 claims received after the May 2, 2005, filing deadline.

2. On September 12, 2005, the EEOC sent the Administrator the EEOC's determination regarding the claims approved and the claims denied lists. On reviewing the 105 untimely claims, the EEOC discovered that more than 50% of these claims were mailed at least three days before the filing deadline. One of the untimely claims was postmarked April 10, 2005, but not received until May 4, 2005. The EEOC determined to evaluate the seventy-seven (77) claims which were postmarked on or before the filing deadline of May 2, 2005. EEOC's determination of these additional 77 claims was provided to the administrator on September 14, 2005.

3. Under Paragraph 46.06 of the Decree, the Administrator is required to send notices to Claimants within ten (10) days of receiving the EEOC's determinations. Thus, the notices are presently required to be sent by Monday, September 26, 2005, assuming the time began to run on September 14, 2005, when EEOC provided its determinations on the Untimely claims. Because the language of the notices cannot be finalized until the Court determines this Motion, *the EEOC requests that the time for sending Notices be extended to ten days after determination of this motion, or September 30, 2005, whichever is later.*

4. Paragraphs 47.02, 47.03, and 47.04 of the Decree provide for claimants who object to the determination of their claims to submit a Request for Review to the Administrator, who will evaluate, investigate as necessary, and submit recommendations to the EEOC for final determination. Because the EEOC will, in any event, conduct a *de novo* review of all Requests for Review, the EEOC believes that preliminary review and recommendations by the Administrator is unnecessary and will only cause unnecessary delay in the review process.

5. Accordingly, EEOC moves to modify Paragraphs 47.02, 47.03, 47.03 as follows (new language in **bold**; omitted language in ~~strikethrough~~):

47.02 Filing a Request for Review: A Claimant may submit a Request for Review by mailing, or otherwise delivering to the **EEOC Administrator** a written

explanation of why the determinations of Class Member status or Claim Share amount should be changed. A Request for Review must be received by the ~~EEOC Administrator~~ within thirty (30) days after the Notices of Determination required by Paragraph 46.06, are mailed. **Requests for Review erroneously sent to the Administrator will be deemed received by the EEOC on the date received by the Administrator.**

47.03 Informal Resolution Efforts: The ~~EEOC Administrator~~ shall consider each Request for Review and **make a determination based on information submitted by the Claimant.** ~~may undertake any additional investigation the EEOC Administrator deems necessary.~~ Within sixty (60) days after the Administrator mails notices required by Paragraph 46.06, the **EEOC shall complete its evaluation and any informal efforts to resolve the Requests for Review.** ~~Administrator shall make written recommendations to the EEOC on each Request for Review, specifying whether the Administrator believes the EEOC should change its determinations of Class Member status or Claim Share amount. The EEOC shall then accept, reject, or modify the Administrator's recommendations on decisions that are subject to Requests for Review.~~

47.04 Review Hearing: At the close of the informal resolution process under Paragraph 47.03, the ~~EEOC Administrator~~ will forward to the Court all Requests for Review which have not been resolved to the Claimant's satisfaction, with copies to Home Depot and the Administrator. The Court may conduct a Review Hearing to determine unresolved Requests for Review, if any. The Court shall change the EEOC's determinations only upon a finding that the EEOC's determination constitutes a gross deviation from the EEOC's application of the provisions contained in Paragraph 43.03. At least seven (7) days prior to the Review Hearing, the EEOC will file in court, under seal, a proposed Final Class Distribution List, with copies to Home Depot and the Administrator. The Court may approve the proposed Final Class Distribution List, or order modifications as necessary to effect the Court's rulings on Class Claimants' Requests for Review. Any modifications by the Court shall not increase Home Depot's obligations under this Decree.

6. **Certification of Compliance with D.C.Colo.L.R. 7.1:** Defendant does not object to this motion.

WHEREFORE, the EEOC respectfully requests that the Consent Decree be modified as described in Paragraph 5 above, and that the time for sending Claimant notices be extended to ten (10) days after the Court's ruling on this motion, or Friday, September 30, 2005, whichever is later.

Dated: September 19, 2005.

Respectfully submitted,

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Regional Attorney

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on September 19, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the nonparticipant's name:

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s/ Rita Byrnes Kittle