[Names and addresses of Counsel listed on signature page]

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VICKI BUTLER, SUSAN ELLIS, FELICIA FUNDERBURK, JACQUELINE GENERO, SHERYLE JONES, KIMBERLY STODDARD, and CHERYL WILLIAMS, on behalf of themselves and all others similarly situated, and JAMIE WILSON, an individual, Plaintiffs, vs. HOME DEPOT, INC., Defendant.	Case No. C 94-4335 SI **CLASS ACTION** **CONSENT DECREE**
CONSOLIDATED CASE: TERESA FRANK, KATHERINE TOMA, and KATHLEEN YORK, on behalf of themselves and all others similarly situated, Plaintiffs, vs. HOME DEPOT, INC., Defendant.	Case No. C 95-2182 SI **CLASS ACTION**

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I. INTRODUCTION

This Consent Decree ("Decree") has been voluntarily entered into by the parties engaged in this litigation, and has been submitted to the United States District Court for approval. This Decree finally resolves the litigation now pending between the parties.

This Consent Decree includes a joint statement of the purposes of the Decree, a description of the history of the litigation, and various substantive provisions agreed upon by the parties. No particular provision has been agreed to because of any prior Court order. Rather, the parties have met and reached voluntary agreement on the entire contents of this Decree.

II. PURPOSES OF THE CONSENT DECREE

The parties have entered into this Consent Decree for the following purposes:

A. To resolve all disputes covered by this Consent Decree in such a way as to avoid further expensive and protracted litigation;

B. To ensure equal employment opportunity for females working within, and applying to, Home Depot's West Coast Division stores;

C. To increase the awareness of females concerning the various career options available to them in Home Depot's West Coast Division stores, and to ensure that they are compensated, considered for hire, training, job assignment and promotional opportunities in which they are interested and qualified on a non-discriminatory basis.

D. To create an expedited procedure for distributing a monetary settlement to eligible members of the Settlement Class and for implementing equitable relief pursuant to the terms of this Decree; and

E. To provide finality to the resolution of all claims and defenses asserted in this action.

III. DEFINITIONS

The following terms when used in this Decree, in addition to the terms defined elsewhere in the Decree, shall have the following meanings:

A. "Approval Date" means the date upon which the Court signs this Decree, after having determined that it is fair, adequate and reasonable to the Class as a whole, after: (i) notice

to the Class, (ii) an opportunity to opt out of the Settlement Class with respect to monetary relief, (iii) an opportunity to submit timely objections to the Decree, (iv) appropriate discovery of the specifics of any such timely objections, and (v) a hearing on the fairness of the settlement.

B. "Assistant Store Manager" means both the job titles Assistant Store Manager and Assistant Store Manager Trainee.

C. "Benchmark Positions" means the following Home Depot West Coast Division store positions:

Sales Associate

Merchandising Department Supervisor

Assistant Store Manager

Store Manager

D. "Benchmark Related Geographical Area" means, as applicable, stores, districts and regions within Home Depot's West Coast Division, including the division itself.

E. "Best Efforts" means implementing a plan reasonably designed to comply with the specified objectives to which the best efforts are directed.

F. "Class" and "Settlement Class" are defined in Sections IV and VII, respectively.

G. "Class Counsel" means Lieff, Cabraser, Heimann & Bernstein, LLP of San Francisco, California and Saperstein, Goldstein, Demchak & Baller of Oakland, California.

H. "Class Representatives" means Vicki Butler, Susan Ellis, Teresa Frank, Felicia Funderburk, Jacqueline Genero, Sheryle Jones, Kimberly Stoddard, Katherine Toma, Kathleen York, and Cheryl Williams, who were certified by the Court to represent the Class pursuant to Fed. R. Civ. P. 23.

I. "Court" means the United States District Court for the Northern District of California.

J. "Decree Year" means the one-year period from the Final Approval Date or the anniversary of the Final Approval Date until the next anniversary of the Final Approval Date. For example, "Decree Year One" would be the one-year period from the Final Approval Date until the first anniversary of the Final Approval Date.

K. "Eligible Associates" means those Associates who have registered their interest for the pertinent job pursuant to the Home Depot Job Preference Process provisions of Section XIII of the Decree, and have been determined to meet the Minimum Qualifications for the pertinent job established and maintained by Home Depot pursuant to the terms of Section XIII. In accordance with common usage at Home Depot, "associates" shall refer to all hourly and managerial employees.

L. "Eligible Applicants" means those external Applicants who have registered their interest for Benchmark Positions pursuant to the Home Depot Job Preference Process in Section XIII, and who meet the Minimum Qualifications of the pertinent job.

M. "Employee Class Member" means those Settlement Class Members who were employed by Home Depot in its West Coast Division stores at any time between November 5, 1992 and the Preliminary Approval Date.

N. "Final Approval" means the entry of this Decree on the Approval Date by the United States District Court for the Northern District of California, and either: (1) the expiration of the time for filing of a direct appeal from the Court's approval of the Decree without the filing of a notice of appeal, or (2) if a timely direct appeal is filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Consent Decree.

O. "Final Approval Date" is the date upon which Final Approval of this Decree is attained.

P. "Gender Discrimination" or "Discriminating on the basis of Gender" means unlawful discrimination against Associates on the basis of their sex or gender, including but not limited to retaliation against an Associate because he or she has opposed practices he or she believes in good faith to constitute unlawful sex or gender discrimination or has participated in processes designed to obtain relief for alleged unlawful sex or gender discrimination. For all purposes of this Decree, "Gender Discrimination" and "Discriminating on the basis of Gender" shall not include: (1) sexual harassment, (2) retaliation for opposing or complaining about alleged

sexual harassment, and (3) retaliation for participating in a process designed to obtain relief for alleged sexual harassment.

Q. "Home Depot," "Defendant" and "the Company" mean Home Depot, USA, Inc. For all purposes and terms of this Decree, only the West Coast Division stores of Home Depot are covered hereunder.

R. "JPP Semi-Annual Anniversary Date(s)" means September 17, 1998, March 17, 1999, and September 17 and March 17 during each Decree Year thereafter.

S. "Liability Period" means the period between November 5, 1992 and the Preliminary Approval Date.

T. "Minimum Qualifications" means those discrete objective qualifications (such as service requirements, educational requirements, job knowledge tests, etc.) which: (1) are used by Home Depot as preliminary, independent qualifiers, such that the failure to meet the qualification is, itself, used by Home Depot to preclude further consideration of the individual for a Benchmark Position; (2) can be isolated for purposes of determining adverse impact; and (3) may be applied by Home Depot to screen Associates who have registered interest in a position, prior to determination of Benchmarks under this Decree. The current Minimum Qualifications for Benchmark Positions are set forth in Exhibit A, attached hereto.

U. "Plaintiffs" means the Class Representatives in their capacity as party litigants in the Butler and Frank actions, and Jamie Wilson.

V. "Rejected Applicant Class Members" means those Settlement Class Members who applied for employment in Home Depot stores within the geographical area of Home Depot's West Coast Division stores between November 5, 1992 and the Preliminary Approval Date and were qualified for employment as a Sales Associate or Assistant Manager or Associate Manager and were not hired.

W. "Preliminary Approval Date" means the date upon which the Court enters an Order preliminarily approving this Decree, pending notice, an opportunity to opt out of the Settlement Class or submit objections to the Decree, and a fairness hearing thereon.

X. "Selection Standards" means any factors considered by Home Depot in making a final selection decision, other than Minimum Qualifications.

Y. "Term of this Consent Decree" is the period from the Approval Date until the expiration of the Decree pursuant to Section VI.

Z. "West Coast Division" means Home Depot's division of retail stores located in Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah and Washington and the retail stores located in Albuquerque, New Mexico and El Paso, Texas before these stores were transferred to the Southwest Division as of February 3, 1997.

IV. LITIGATION BACKGROUND

On December 20, 1994, seven female current or former Associates of Home Depot, and one applicant for employment to Home Depot USA, Inc., Vicki Butler, Susan Ellis, Felicia Funderburk, Jacqueline Genero, Sheryle Jones, Kimberly Stoddard, Cheryl Williams, and Jamie Wilson, filed a complaint on behalf of themselves as individuals and on behalf of other similarly situated females against Home Depot, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq., ("Title VII"), and the California Fair Employment and Housing Act, Cal. Gov. Code §§ 12940 et seq. ("FEHA"). The action, entitled Butler, et al. v. Home Depot, Inc., Civil Action No. C94-4335 SI ("the Butler action"), brought in the United States District Court for the Northern District of California, alleges that Home Depot has engaged in a policy or pattern or practice of discrimination on the basis of gender against the Plaintiffs and against similarly situated female current and former Associates of, and applicants to, Home Depot's West Coast Division in connection with hiring for, and initial and subsequent job assignments to, sales and management positions, training, promotion, compensation and other terms and conditions of employment.

Home Depot categorically denies that it has engaged in any policy or pattern or practice of gender discrimination against the Plaintiffs or against any other female current or former Associates or applicants, and maintains that its female Associates and applicants have had equal employment opportunity and are hired for, and assigned to, sales and management positions and are trained, promoted, paid, provided benefits and accorded the same terms and conditions as

Home Depot's similarly situated and interested male Associates and applicants. Home Depot further contends that it is in compliance with all applicable state and federal fair employment laws.

In early 1995, the parties conducted discovery relating to class certification issues. Plaintiffs deposed approximately ten Home Depot managers. Home Depot deposed, or partially deposed, the class representatives in the Butler action.

On June 30, 1995, three additional current and former female Associates of Home Depot, Teresa Frank, Katherine Toma, and Kathleen York, filed a gender discrimination class action complaint, C95-2182 SI (the "Frank action") against Home Depot asserting claims almost identical to the Butler action. On January 24, 1996, the Court consolidated the Butler and Frank actions. (The consolidated cases are hereafter referred to as "the Butler action.")

On May 5, 1995, Plaintiffs filed a motion for certification of the Butler action as a class action. Plaintiffs supported their motion with, inter alia, declarations of putative class members, excerpts of deposition testimony from Home Depot managers, documents obtained from Home Depot during discovery, and a declaration from an expert witness. Home Depot vigorously opposed Plaintiffs' class certification motion. The parties filed numerous briefs and supplemental briefs.

On August 30, 1995, the Court heard argument on Plaintiffs' motion requesting that the Court certify the Butler action as a class action. On January 24, 1996, the Court granted Plaintiffs' motion. The Court certified a class (the "Class") comprised of:

> A. All female Associates of Home Depot within the geographical area of Home Depot's West Coast Division who are or were employed on or after November 5, 1992, or who are or will be employed between this date and the date of entry of judgment in this class action; and
>
> B. All female applicants who applied for employment in Home Depot stores within the geographical area of Home Depot's West Coast Division on or after November 5, 1992, and were qualified for employment in the positions of salespersons or assistant managers and who were not hired or were hired for cashier or other operations positions.

Order Certifying Class Action (January 24, 1996).

Throughout 1996 and the first eight and one half months of 1997 the parties conducted discovery concerning the merits of Plaintiffs' individual and class claims. The discovery was broad, extensive, and thorough. The discovery included requests for production of documents, interrogatories, contention interrogatories, requests for admissions, disclosures pursuant to Rule 26, and extensive expert discovery.

Discovery included the production of extensive documents from Plaintiffs and Home Depot including production of computerized personnel and payroll data from 1991 through early 1997, relating to Home Depot's West Coast Division. Several hundreds of thousands of pages of documents were produced. In addition, several third parties were subpoenaed, and produced documents, including Automatic Data Processing, which produced payroll data from Home Depot's West Coast Division from 1991-1993.

The parties have litigated numerous discovery issues, including but not limited to: (1) the discoverability of information concerning sexual harassment complaints asserted by class members other than the Class Representatives; (2) discovery regarding Home Depot's diversity initiative, and (3) the geographical and temporal scope of discovery. The parties also have litigated the appropriate scope and content of counsel's communications with class members.

Deposition discovery was extensive. Well over 100 persons were deposed including the Class Representatives, class members, including many of the approximately 60 class members who filed declarations in support of Plaintiffs' motion for class certification, and Home Depot managers and Associates. In addition, pursuant to Rule 30(b)(6), Class Counsel deposed Home Depot through its designated representatives on a variety of topics, including Home Depot's (1) personnel policies, (2) evaluations, (3) training, (4) computerized records, (5) retention of documents, and (6) diversity initiative.

In March, April, May, and June 1997, the parties served and filed expert reports, rebuttal expert reports, and surrebuttal expert reports. Plaintiffs submitted expert reports from Dr. Richard Drogin, a statistician: Dr. Marc Bendick, a labor economist; Dr. Susan Fiske, a social psychologist; Dr. William Bielby, a sociologist; Dr. Carl Hoffmann, an expert in survey research and job interests; Dr. Mary Gentile, an expert in the fields of organizational diversity program

design and implementation; and Dr. Kathleen Lundquist, an organizational psychologist. Home Depot submitted expert reports from, among others, Dr. Judith Stoikov, a statistician; Dr. Ali Saad, a labor economist; Dr. Edward Lazear, a labor economist; Dr. Gary Becker, a labor economist; Dr. Sherwin Rosen, a labor economist; Janis Martinez, a search firm consultant; Dr. Samuel Culbert, a management consultant; and Dr. Barbara Gutek, an organizational psychologist. These experts were deposed at length.

On July 9, 1997, the Court heard argument on Home Depot's motions to exclude testimony by Drs. Gentile, Fiske, Bielby, and Hoffmann pursuant to Daubert v. Merrell Dow Pharmaceutical, Inc., 509 U.S. 579 (1993). On July 31, 1997, the Court denied Home Depot's motions.

In the Summer of 1997, the parties exchanged final trial witness lists, descriptions of trial witness testimony, and trial exhibits. The parties also submitted jury instructions, jury verdict forms, and proposed findings of fact and conclusions of law. In August, and September 1997, the parties briefed and argued over 80 motions in limine. The parties submitted stipulations of undisputed facts on September 15, 1997.

After the discovery cut-off, Home Depot filed three motions: (1) a motion for summary judgment on the claims of female applicants; (2) a motion for summary judgment on the claims of female Associates; and (3) a motion for decertification of the applicant and employee classes. On August 29, 1997, the Court denied the motion for decertification and the motion for summary judgment on the claims of female applicants. As to the motion for summary judgment on the claims of female Associates, the Court dismissed claims relating to training and to non-store based Associates, but denied the motion in all other respects.

On September 2, 1997, the Court held a pretrial conference. At that conference, the Court confirmed that trial would begin on September 22, 1997, and placed limits of 80 hours per side on the parties' presentations of evidence.

The Plaintiffs have vigorously prosecuted this case, and Home Depot has vigorously contested it. All pretrial discovery was completed, numerous pre-trial motions were ruled upon, and the parties were prepared for trial. As a result, the parties were able to assess

reliably the relative merits of the claims of the Plaintiffs and the certified Class, and of Home Depot's defenses.

In February, 1997, counsel for the parties met to explore the possibility of settlement. In April, the parties exchanged proposals regarding injunctive relief. Unable to reach agreement at that time because of their very different views of the strength of Plaintiffs' claims, the parties did not discuss settlement again in substance until the Court directed the parties at the pretrial conference held September 2, 1997, to once again explore settlement.

On September 5, 1997, Plaintiffs and Home Depot began Court-ordered mediation negotiations with the assistance of an experienced mediator: Hunter Hughes of Atlanta, Georgia. Under the supervision of the mediator, these negotiations have been conducted at arms-length and without collusion. These efforts resulted in an agreement to settle this action. The terms of the parties' agreement are contained in this Consent Decree.

The parties agree that the formal and informal discovery conducted in this action -- the depositions taken by both sides, the documents produced, the expert witness reports, and the information exchanged during mediation — are sufficient to assess reliably the merits of the respective parties' positions and to compromise the issues on a fair and equitable basis. As reflected by the signatures of counsel at the end of this document, the parties have consented to the entry of this Decree.

V. JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this action. The Complaints in the Butler and Frank actions assert claims that, if proven, would authorize the Court to grant the equitable and monetary relief set forth in this Consent Decree. Venue is proper in this District. This Court shall retain jurisdiction of this action during the duration of the Decree solely for the purpose of entering all orders authorized hereunder, which may be necessary to implement the relief provided herein.

VI. EFFECTIVE DATES AND DURATION OF CONSENT DECREE

A. Unless provided otherwise, the equitable provisions in this Decree are effective immediately upon the Approval Date, provided, however, that in the event that this Decree

ultimately does not receive Final Approval, then any prior contempt finding which may have been entered shall be vacated by the Court.

B. Except as otherwise provided herein, the provisions of this Decree and the agreements contained herein shall remain in effect for a period of five (5) years during which the provisions in Section XIII concerning the Benchmarks are fully operational. Provided, however, that four (4) years after the Approval Date, Home Depot may move the Court to terminate the Decree if: (i) the provisions in Section XIII concerning the application of Benchmarks have been fully operational for at least three years; (ii) Home Depot has met the Benchmarks or justified pursuant to Section XIII its failure to meet the Benchmarks; and (iii) during the three year period prior to its motion to terminate the Decree, Home Depot has not been held in violation of any provision of the Decree pursuant to the dispute resolution section established in Section XI.

VII. SETTLEMENT CLASS

A. For purposes of the monetary relief provided in this Decree, the Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(3) and consists of:

1. All female Associates of Home Depot's West Coast Division stores who are or were employed, for any length of time, between November 5, 1992 and the Preliminary Approval Date (start and end dates inclusive), except those who file a timely request to opt out of the monetary relief provisions of the Decree;

2. All female applicants who applied for employment in Home Depot stores within the geographical area of Home Depot's West Coast Division between November 5, 1992 and the Preliminary Approval Date (start and end dates inclusive) and were qualified for employment in the positions of Sales Associates, Associate Managers, or Assistant Managers and who were not hired, or were hired for cashier or other operations positions, except those who file a timely request to opt out of the monetary relief provisions of the Decree.

B. For purposes of the equitable and declaratory relief provided in this Decree, the Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(2) and consists of:

1. All female Associates of Home Depot's West Coast Division stores who are or were employed, for any length of time, between November 5, 1992 and the Preliminary Approval Date (start and end dates inclusive).

2. All female applicants who applied for employment in Home Depot stores within the geographical area of Home Depot's West Coast Division between November 5, 1992 and the Preliminary Approval Date (start and end dates inclusive) and were qualified for employment in the positions of Sales Associates, Associate Managers, or Assistant Managers and who were not hired, or were hired for cashier or other operations positions.

C. The Settlement Class closes on the Preliminary Approval Date. All females hired by Home Depot into its West Coast Division stores after the Preliminary Approval Date may avail themselves of the equitable relief provided in the Decree but shall not be entitled to any portion of the monetary relief provided hereunder.

D. For purposes of Section VII of this Decree, Settlement Class members who have filed a timely request to opt out of the monetary relief provisions of the Decree shall not be held to release any claims for individual relief.

E. For purposes of Section VII of this Decree, the Settlement Class does not include those individuals who have filed a timely request to opt out of the monetary relief provisions of this Decree.

F. In the event that Final Approval of this Decree is not attained, nothing herein shall be deemed to waive Home Depot's objections and defenses to class certification, and this Decree shall not then be admissible in any court regarding the propriety of class certification or any other issue.

VIII. RELEASE OF CLAIMS

A. Release of Claims by Settlement Class

Upon Final Approval of the Decree, Home Depot and its directors, officers, managers, agents, Associates, attorneys, successors and assigns, any and all benefit plan administrators and anyone acting in concert with or on behalf of any of them, shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands,

charges, complaints, rights and causes of action of any kind, known or unknown, by the Class Representatives, by Plaintiffs, by the Settlement Class, by each member of the Settlement Class (hereafter "Releasors"), and by the Releasors' estates, whether seeking monetary and/or equitable relief of any sort, which arise out of or are related to conduct within the Liability Period constituting alleged Gender Discrimination in employment under Title VII and/or alleged violations of the recordkeeping requirements with respect to gender promulgated pursuant to Title VII, the California FEHA and/or any other law prohibiting Gender Discrimination, whether statutory, pursuant to local ordinance or at common law, excepting solely claims of Settlement Class members (other than the Plaintiffs) for (a) alleged sexual harassment or (b) alleged retaliation for opposing or complaining about purported sexual harassment and/or for participating in a process designed to obtain relief for alleged sexual harassment. This Release is final and shall survive the expiration of the Decree's term.

B. **Release of Claims By Plaintiffs**

Upon Final Approval of the Decree, for and in consideration of the mutual promises, terms and conditions by and between Plaintiffs and Defendant set forth herein, the sufficiency of which consideration is expressly acknowledged, the Plaintiffs do hereby fully, finally and forever release and discharge Home Depot, its directors, officers, any and all benefit plan administrators, managers, agents, Associates, attorneys, successors and/or assigns, and anyone acting in concert with or on behalf of them, from any and all past and/or present claims, demands, actions, causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether or not known, allegedly incurred by Plaintiffs because of claimed unlawful Gender Discrimination or any other allegedly illegal actions by Defendant, including but not limited to those arising in any way out of the alleged facts, circumstances and occurrences underlying those allegations of violations of Title VII, and the California FEHA which were asserted or which might have been asserted by or on behalf of the Plaintiffs against Defendant either in Plaintiffs' complaints in the Butler and Frank actions, or in any and all charges of discrimination filed against Home Depot by some or all of the Plaintiffs with the Equal Employment Opportunity Commission (EEOC). This

Release does not include the workers compensation claims, if any, of the Plaintiffs. This Release is final and shall survive the expiration of the Decree's term.

As to those Plaintiffs who are not employed by Home Depot, they further agree not to re-apply or otherwise seek employment at Home Depot in the future.

C. **No Tolling of Sexual Harassment Claims**

Any claims of Settlement Class members (other than those of the Plaintiffs) for alleged sexual harassment or for alleged retaliation for opposing or complaining about purported sexual harassment and/or for participating in a process designed to obtain relief for alleged sexual harassment are not released hereunder because such claims are not and have never been asserted on a class-wide basis as a part of the Butler and Frank actions. Hence, there also has been no tolling of the statute of limitations for asserting any such claims against Home Depot by operation of this lawsuit or any of the Plaintiffs' individual EEOC charges.

D. **No Bar to Future Claims**

Nothing in the Decree shall be construed to bar any claims of members of the Settlement Class or Plaintiffs that arise after the Preliminary Approval Date.

IX. MISCELLANEOUS PROVISIONS

A. **Calculation of Time**

In computing any period of time prescribed or allowed by this Decree, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) as it exists at the time at issue.

B. **No Admission of Liability**

This Decree represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Home Depot denies that it has engaged in any policy or pattern or practice of unlawful Gender Discrimination, and Home Depot's entry into this Decree is not, and may not be used by any person as an admission or evidence that Home Depot has on any occasion engaged in discriminatory employment practices, such being expressly denied. Home Depot has voluntarily entered into this Decree because the actions it has agreed to undertake demonstrate its strong commitment to equal employment

opportunity. Accordingly, this Decree or any documents related thereto, such as claims forms, reports, notices and other such documents, shall not be discoverable or admissible for any purpose in any proceeding other than one relating directly to the enforcement of this Decree.

C. **Modification and Severability of the Consent Decree**

1. Whenever possible, each provision and term of this Decree shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event that after Final Approval hereof any provision or term of this Decree should be determined to be or rendered unenforceable on collateral review, all other provisions and terms of this Decree and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law. If any application of any provisions or term of this Decree to any specific person or circumstance should be determined to be invalid or unenforceable, the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

2. Class Counsel and Home Depot may jointly agree to modify the Decree. In the event that changed or other circumstances make a modification of the Decree necessary to ensure its purposes are fully effectuated, but good faith negotiations seeking such modification are unsuccessful, any party to the Consent Decree shall have the right to move the Court to modify this Decree. Such motion shall be granted only upon the movant proving to the Court by clear and convincing evidence that changed or other circumstances make such modification necessary and that the modification will not materially increase the burden of compliance and/or the direct cost to Home Depot of compliance (out-of-pocket or otherwise), after an opportunity for the other parties to be heard on the motion. Any such modification to this Decree by the Court shall be ordered in such a fashion that will limit the burden of compliance and/or the direct cost to Home Depot (out-of-pocket or otherwise) to the extent possible consistent with effectuating the purposes of this Decree. The procedures for negotiations about modifying this Decree (and, if necessary, for resolution of disputes) shall be the same as those set forth in Section X.B., regarding Decree enforcement.

D. **Duty to Support and Defend the Decree**

Class Representatives, Class Counsel and Home Depot each agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use their Best Efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.

E. **Deadlines**

The parties recognize that from time to time unforeseen events, including, but not limited to, exigent business circumstances and personnel issues, cause delays in the accomplishment of objectives no matter how well intentioned and diligent the parties may be. Accordingly, with regard to the provisions of this Consent Decree that require certain acts to be taken within specified time periods, the parties understand and agree that in the event that any party determines that an action required by this Consent Decree cannot be taken within the specified time period, that party shall promptly notify the other party that it anticipates a delay, the reasons for the delay, and a proposed alternative deadline. The parties shall endeavor to cooperate in reasonably rescheduling such deadlines; however, if the other party does not agree to the proposed delay, the parties shall follow the dispute resolution procedure set forth in Section XI of this Consent Decree.

X. GENERAL EQUITABLE PROVISIONS

A. **General Injunctive Provisions**

1. Home Depot and its officers, agents and management or supervisory Associates shall not engage in any policy, practice or procedure which has the purpose of discriminating against any Class Representative or member of the Settlement Class on the basis of gender.

2. Home Depot and its officers, agents and management or supervisory Associates shall not engage in or be a party to any act, policy, practice or procedure which discriminates, retaliates, or has the purpose of discriminating or retaliating against any Class Representative, any member of the Settlement Class, any employee of, or applicant to Home Depot or any other person because he or she furnished information, gave testimony or participated in any respect in the prosecution of the Butler action, or in any of the individual charges of

Gender Discrimination filed with the EEOC prior to the Preliminary Approval Date by the Class Representatives or members of the Settlement Class, or filed a claim form pursuant to Section XV.

3. Home Depot, and its officers, agents and management or supervisory Associates shall make available to female Associates and applicants the same employment opportunities and terms and conditions of employment, including but not limited to hiring, job assignments, transfers, compensation, training, and promotions, as Home Depot affords similarly situated male Associates.

4. Nothing herein should be construed as any finding or admission that Home Depot previously has failed to act in the manner described in Section X.A.3.

5. Associates complaining of alleged violations of the provisions set forth in Sections X.A.1. through X.A.3., may use Home Depot's internal complaint procedure or may file charges with the EEOC, or the state or local fair employment practices ("FEP") agency. The parties mutually intend that the enforcement provisions of this Decree shall not be used as an alternative method for class members to litigate entitlement to individual relief for claims of alleged Gender Discrimination. Individual complaints of such alleged violations, as distinguished from pattern or practice allegations, shall not be considered to raise an issue of compliance or non-compliance with this Decree, except insofar as the conduct of a Home Depot officer, manager or supervisor is of the level and nature necessary for the issuance of a contempt citation under Section X.B.

6. As of the Approval Date, and pursuant to the Court's authority under the All Writs Act and the Anti-Injunction Act, 28 U.S.C. §§ 1651, 2283, and Federal Rule of Civil Procedure 23, each and every Class Representative and each and every Settlement Class member who does not file a timely request to opt out shall be and hereby is permanently enjoined from bringing claims released pursuant to Section VIII in any court, agency or adjudicative body, whether federal, state or local.

B. **Standard for Judicial Enforcement by Contempt**

1. Class Counsel may petition the Court to hold Home Depot or its officers or managers in contempt, but only after: (a) having exhausted the dispute resolution procedures set forth in Section XI without having obtained reasonably effective remedial action, and (b) having, after a reasonable investigation, concluded in good faith that the standards for a contempt citation described below have been met.

a. Officers or managers of Home Depot shall not be held in contempt unless the Court finds, by clear and convincing evidence, that either: (i) there has been an intentional disregard or intentional violation of a term or terms of the Decree by that officer or manager, (ii) such officer or manager had knowledge of such a violation of this Decree committed by one of his or her subordinate managers or supervisors but failed to take reasonably effective remedial action, or (iii) there is an intentional disregard by such officer or manager of the fact that a Home Depot policy, practice or procedure has an adverse impact on female Associates or applicants in violation of this Decree and such policy, practice, or procedure is not otherwise lawful under applicable Title VII law; and, as to any to the foregoing, reasonably effective remedial action has not been taken by Home Depot.

b. Home Depot shall not be held in contempt unless the Court finds, by clear and convincing evidence, that either (i) there has been an intentional disregard or intentional violation of a term or terms of the Decree by one or more Home Depot agents at the level of officer or above, or by the Compliance Official; (ii) one or more agents of Home Depot at the level of officer or above, or the Compliance Official, had knowledge of such a violation of this Decree by an officer, manager or supervisor of Home Depot but failed to take reasonably effective remedial action, with respect to a matter within his or her area of responsibility, or (iii) there is an intentional disregard by one or more Home Depot agents at the level of officer or above, or by the Compliance Official, of the fact that a Home Depot policy, practice, or procedure has an adverse impact on female Associates or applicants in violation of this Decree and such policy, practice or procedure is not otherwise lawful under applicable Title VII law; and, as to any of the foregoing, reasonably effective remedial action has not been taken by Home Depot.

2. Third parties shall not have standing to petition the Court to hold Home Depot or its officers, managers or supervisors in contempt. Rather, any individual concerned about the Company's compliance with this Decree may so notify Class Counsel and request that they fulfill their responsibility to examine Home Depot's compliance and to seek such relief, if any, as may be appropriate.

C. **Prevention of Sexual Harassment**

1. Home Depot shall continue to maintain enforcement procedures for the "Standard Operating Procedure 01-21: Workplace Issues," attached as Exhibit B hereto (the "Harassment Policy"). Home Depot may amend the Harassment Policy from time to time as it may deem necessary as long as the amended policy has the same substantive import as the Harassment Policy and is reasonably designed to achieve the same effect as the Harassment Policy in meeting the Purposes of the Decree. Prior to implementing an amended policy, Home Depot shall provide Class Counsel with notice of its proposed amendment and a statement of the reasons therefor. Within twenty (20) days after receipt of such notice from Home Depot, Class Counsel shall notify Home Depot if they believe that the amended policy is not effective to meet the Purposes of the Decree, the reasons for that belief, and invoke the meet and confer procedures set forth in Section XI.

2. The Harassment Policy attached as Exhibit B applies to harassment on bases in addition to gender; however, the provisions of Section X.C.I. apply only to the "sexual harassment" provisions of the Harassment Policy.

3. Associates complaining of alleged sexual harassment may use Home Depot's internal complaint procedures or may file charges with the EEOC or with state or local FEP agencies. Individual complaints and any related individual retaliation claims shall not be considered to raise an issue of compliance or non-compliance with this Decree. Only a complaint that Home Depot as a matter of policy, practice or procedure, has not adopted or is not implementing or maintaining enforcement procedures for the Harassment Policy regarding complaints of alleged sexual harassment shall raise an issue of compliance or non-compliance with Section X.C.I. of this Decree. The substantive results of any sexual harassment investigation

undertaken by the Company pursuant to the Harassment Policy are outside the scope of this Decree, and shall not be the subject of any enforcement proceeding or reporting obligation hereunder.

D. Home Depot's Internal Mechanisms for Monitoring Compliance

1. Designation of Compliance Official.

a. Within two (2) weeks of the Approval Date, Home Depot shall designate a Compliance Official who shall be charged with overall responsibility for monitoring compliance with the terms of the Decree. The Compliance Official shall either be the Division Vice President of Human Resources or another individual who shall report directly to the Human Resources Committee of the Board of Directors designated pursuant to Section X.D.2.b.

b. In the event that the Compliance Official ceases to function in that role, the Company shall designate a replacement Compliance Official as soon as practicable but no later than (30) days after the Compliance Official ceases to function in that role.

c. The following procedure shall apply in selecting the Compliance Official:

(i) The Company shall use its Best Efforts to appoint an individual who will be effective in carrying out the duties and responsibilities set forth in Section IX.D.2.

(ii) Prior to appointing an individual for the Compliance Official position, the Company shall provide Class Counsel with a resume including the identity, background, experience and qualifications of the individual that the Company intends to appoint to the position. The Company also shall provide Class Counsel with a description of the reasons why it designated this individual. Within ten (10) days of receiving the resume and description of the basis for the selection, Class Counsel may interview the designated individual and provide their views as to the individual's qualifications and suitability for the Compliance Official position.

2. **Duties of the Compliance Official.**

The Compliance Official shall use his or her Best Efforts to ensure the Company's implementation of and compliance with the provisions of this Decree.

a. For purposes of this Section, Best Efforts shall include the following:

(i) Monitoring the establishment, implementation, and revision of the Benchmarks provided for pursuant to Section XIII .C. of the Decree.

(ii) Overseeing the development and implementation of all Training and Education programs to be provided pursuant to Section XII of the Decree.

(iii) Submitting to Class Counsel progress reports and other monitoring and reporting material specified in Section XIV of the Decree.

(iv) Ensuring the implementation and monitoring of the Internal Complaint Procedure set forth in Section XI.D.3. of the Decree.

b. The Human Resources Committee of Home Depot's Board of Directors will generally supervise the Compliance Official in order to ensure that he or she is fulfilling the duties and responsibilities listed in Section XI.D.2. of the Decree.

c. The Company shall provide such support staff, funds and other resources as may be reasonably necessary to discharge the Company's obligations under the Decree.

d. The Compliance Official shall have the authority to recommend appropriate relief, including monetary relief, to be awarded to any individual whom the Compliance Official concludes has been the victim of a violation of the Decree or of Gender Discrimination.

3. **Internal Complaint Procedure.**

a. The Company shall internally publicize its Company-wide policy prohibiting Gender Discrimination, either separately or in conjunction with the Company's overall policy prohibiting discrimination.

b. The policy shall provide that persons engaging in such conduct will be subject to appropriate discipline, up to and including discharge. The policy shall be posted in a prominent place for Associates in each employing location covered by this Decree, and shall be described in the summary leaflet provided for in Section XII.A.1.

c. The Company shall maintain an internal complaint procedure for the purpose of resolving "Covered Complaints." The phrase "Covered Complaint" shall mean any complaint by a female Associate asserting that: (i) any provision of this Decree has been violated with respect to her employment with the Company, or (ii) that she has been the subject of Gender Discrimination. Consistent with the definition of Gender Discrimination in this Decree,"Covered Complaint" shall not include complaints of sexual harassment. At its election, however, the Company may extend the operation of the internal complaint procedure to other types of complaints, including but not limited to sexual harassment complaints, without broadening its obligations hereunder, which are strictly limited to complaints about Gender Discrimination and compliance with this Decree. The internal complaint procedure shall not preclude an employee's right to file charges with the EEOC or with state or local FEP agencies.

d. An Associate with a Covered Complaint shall be encouraged, but not required, to resolve the dispute informally at a local level.

e. The internal complaint procedure will permit an Associate to initiate a formal Covered Complaint by submitting a written complaint with the Division's Employee Relations Manager ("DERM") on a form designed for that purpose. The Company will make such forms available to Associates at each West Coast Division store upon request to the Store Manager or an Assistant Store Manager. In addition, there is a toll-free number through which an Associate may confidentially request and obtain a form for making such a complaint, which the Company will continue to maintain and publicize.

f. Within two (2) weeks of the Approval Date of the Decree, the Company shall designate the Division Employee Relations Manager in accordance with Section X.D.3.g. In the event that the DERM ceases to function in that role during the term of this Decree, as soon as practicable but no later than thirty (30) days after the date the DERM ceases to

function in that role, the Company shall designate a replacement DERM pursuant to Section X.D.3.g. In the event that the DERM ceases to function in that role, the procedures set forth in Section X.D.3.g. will be followed.

g. The following procedure shall apply in selecting a new Division Employee Relations Manager:

(i) The Company shall use its Best Efforts to appoint an individual who will be effective in carrying out the duties and responsibilities set forth in Section X.D.3.h.-k.

(ii) Prior to appointing an individual for the DERM position, the Company shall provide Class Counsel with a resume including the identity, background, experience and qualifications of the individual that the Company intends to appoint to the position. The Company also shall provide Class Counsel with a description of the reasons why it designated this individual. Within ten (10) days of receiving the resume and description of the bases for the selection, Class Counsel may interview the designated individual and provide their views as to the individual's qualifications and suitability for the DERM position.

h. Written Covered Complaints submitted pursuant to Section X.D.3.c-e, shall be investigated by an Associate and/or attorney designated by the DERM unless sufficient information to do so is not found in the complaint or is not otherwise reasonably available. The DERM shall not designate an Associate to investigate a complaint if that particular Associate is the subject of the complaint. The Associate making the complaint shall be advised in writing of the findings of the investigation.

i. Any Associate who has submitted a written Covered Complaint who is not satisfied with the initial resolution of that complaint may file a written request that the matter be reviewed by the Division Vice-President of Human Resources ("DVPHR"), or his/her designee. The Associate requesting such a review shall be advised in writing of the outcome of the review within seven (7) days of the review's completion.

j. The DERM (or a designee under his/her supervision) shall, for all written Covered Complaints during the duration of the Decree, retain copies of: the written

Covered Complaint, the written statement of the findings of the investigation, and, when used, the written request for review and the written statement of the outcome of the review by the DVPHR or his/her designee. Upon Class Counsel's written request, in the context of a dispute regarding compliance with the Decree's express provisions pursuant to the dispute resolution procedures set forth in Section XI, the Company shall provide Class Counsel with a copy of the written Covered Complaint raising the alleged issue of non-compliance, the written statement of the findings of the investigation regarding that complaint, and, when used, the written request for review and the written statement of the outcome of the review by the DVPHR or his/her designee. Such documents shall be kept confidential by Class Counsel and shall not be provided by them to any person or entity not a party to this Consent Decree.

k. The internal complaint procedure established in this Section is not intended to supplant the right of any employee to file a charge or complaint of discrimination or retaliation under any available municipal, state, or federal law, and shall not be interpreted to alter any applicable time limitations for the filing of any such charge or complaint.

4. **Disciplinary Policy.**

a. The Company's published policies shall include the following elements:

(i) A statement that Gender Discrimination in hiring, job assignment, transfer, promotion, training, compensation or benefits, discharge, or other employment decisions is unacceptable.

(ii) A statement that it is unacceptable to retaliate against an employee for using the internal complaint procedure established herein, or for otherwise opposing Gender Discrimination.

(iii) A statement that such alleged conduct, if substantiated, will result in appropriate discipline, up to and including discharge.

b. The Company's Disciplinary Policy shall be disseminated in writing to all West Coast Division store Associates within six months of the Approval Date.

E. **Communication of Consent Decree Requirements and EEO Practices to Officers and Associates**

No later than thirty (30) days after the Approval Date of this Consent Decree, Home Depot shall provide to each of its officers, directors, and Associates in the West Coast Division a copy of the Notice and Summary of Consent Decree, which is attached hereto as Exhibit C, explaining the Company's duties and obligations under the Decree.

XI. DISPUTE RESOLUTION PROCEDURES

A. The parties shall agree to the appointment of attorney Gilmore Diekmann of Bronson, Bronson & McKinnon of San Francisco and Barbara Chvany of Chvany, Silbert & Knowlton of Orinda as Special Masters. Mr. Diekmann shall serve as Special Master in connection with the Dispute Resolution Procedures contained in this Section. Ms. Chvany shall serve as the Claims Review Special Master in connection with the Monetary Claims Procedures contained in Section XV of this Decree. The Special Masters may be removed at the joint written request of Class Counsel and Home Depot, or by order of the Court upon motion of either party. In the event that either Special Master or his/her successor ceases to function as Special Master due to death, voluntary resignation, the joint written request of Class Counsel and Home Depot or an order of Court, Class Counsel and Home Depot shall make a good faith effort to select a new Special Master by mutual agreement. If Class Counsel and Home Depot are unable to reach agreement as to a successor Special Master within forty-five (45) days following the date the predecessor Special Master ceases to function as Special Master, the Court, upon motion of either Class Counsel or Home Depot, shall appoint a successor Special Master. Class Counsel or Home Depot may nominate to the Court persons for consideration as successor Special Master. Both Class Counsel and Home Depot shall have the right to interview any nominated person, and to present argument and evidence to the Court regarding the selection of the Special Master.

B. Special Master Diekmann and any successor of his shall have authority to resolve all disputes arising under the Decree, subject to the various limitations on enforcement, and to the pertinent enforcement standards, as set forth in this Decree. The purpose of the Special Master under this Section is to provide an efficient procedure for the resolution of disputes that arise under the Decree consistent with the terms of the Decree.

C. At the request of Class Counsel or Home Depot, Class Counsel and Home Depot shall confer as necessary, and the parties shall use their Best Efforts to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Consent Decree, including Home Depot's compliance with the Decree.

D. Class Counsel or Home Depot shall have the right to file a motion with the Special Master to resolve any dispute or issue of compliance regarding any provisions of the Decree, subject to the same enforcement limitations and standards referenced in Section XI.B. The procedure for resolution of such issues shall be as follows:

1. If Class Counsel or Home Depot has good reason to believe that a legitimate dispute exists, the initiating party shall promptly give written notice to the other party, including: (a) a reference to all specific provisions of the Decree that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

2. Within twenty (20) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and arguments set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

3. Class Counsel and Home Depot shall undertake good-faith negotiations, which should include a meeting by telephone or in person and the exchange of relevant documents and/or other information, to attempt to resolve the issues in dispute or alleged noncompliance;

4. The Special Master, upon motion, may permit either Class Counsel or Home Depot to take discovery as provided by the Federal Rules of Civil Procedure, but only as to demonstrably relevant documents and/or witnesses, if the Special Master determines that the informal exchange of documents or information has not been sufficient to allow either Class Counsel or Home Depot to present the dispute upon a factual record adequate for the determination required hereunder;

5. If good-faith efforts to resolve the matter have failed, and after written notice of an "impasse" to the non-initiating party, Class Counsel or Home Depot may file a motion with the Special Master, with a supporting brief, requesting resolution of the dispute or the issue of non-compliance, provided, however, that such motion shall be limited to the dispute(s) and/or issue(s) as to which the "meet and confer" provisions of Section XI.D.1-3, have been exhausted;

6. The non-moving party will have fifteen (15) days to respond to any such motion; and

7. The Special Master shall attempt within fifteen (15) days after filing of the final brief to resolve the dispute and may schedule a hearing or other proceeding to resolve the matter.

E. The provisions of this Section do not prevent Class Counsel or Home Depot from promptly bringing an issue directly before the Court when exigent facts or circumstances require immediate Court action to prevent a serious violation of the terms of this Decree, which otherwise would be without meaningful remedy. The moving papers shall explain the facts and circumstances that allegedly necessitate immediate action by the Court. If any such matter is brought before the Court requesting immediate Court action, the opposing party shall be provided with appropriate actual notice, and an opportunity to be heard in opposition to the motion, pursuant to the Local Rules of the Court and the Federal Rules of Civil Procedure. The Court in its discretion may set such procedures for emergency consideration as are appropriate to the particular facts or circumstances, but no such matter may be conducted on an ex parte basis.

F. All fees and expenses of both Special Masters shall be paid by Home Depot, except as provided in Section XVI.A.5.

G. Either Class Counsel or Home Depot may appeal a decision of the Special Master to the Court provided that such an appeal is made within fourteen (14) days of the decision by the Special Master. Any such appeal shall be brought by motion pursuant to the Local Rules of the Court and Federal Rules of Civil Procedure. The decision rendered by the Special Master shall be

affirmed unless the Court finds that the Special Master made clearly erroneous findings of fact or wrongly interpreted or applied the Consent Decree.

XII. TRAINING AND EDUCATION

A. Summary Leaflet

1. Within three (3) months after the Approval Date, the Company shall develop a brief leaflet (with an expected length of not more than 2,000 words) summarizing the content of the non-monetary aspects of the Decree, including the Job Preference Process provisions. The leaflet will refer Associates to the Home Depot Jobs Brochure (see Section XIII.A.3.), which describes career opportunities at Home Depot. Class Counsel shall have the opportunity to review and offer comment on the text of the summary leaflet prior to its use by Home Depot.

2. A copy of the summary leaflet shall be posted and maintained at each Home Depot West Coast Division store in a location readily accessible to Associates and interested applicants, and included in the "new hire" packet during the term of this Decree. When the summary leaflet is initially published, each incumbent employee in Home Depot's West Coast Division stores shall be given a copy. Interested Associates and applicants may review the leaflet on a reasonable basis during non-paid, non-working hours.

3. A reference to the summary leaflet, the introductory CD ROM regarding the Sales Associate position (see Section XIII.A.3) and the Home Depot Jobs Brochure, and advice about where Associates can obtain copies of the leaflet or jobs brochure, or view the CD ROM shall be printed in Home Depot's newspaper "Doings at the Depot" not less than once per year, throughout the duration of the Decree.

B. Training of Division and Regional Management Regarding the Consent Decree

If Home Depot has not already done so prior to the Approval Date, then not later than two months after the Approval Date of the Decree, and thereafter at least once each subsequent calendar year during the term of the Decree, one or more meetings shall be conducted for the West Coast Division President and Regional Vice Presidents to review Home Depot's plan for compliance with the terms of the Decree.

C. **Training of District Managers and Store Managers Regarding the Consent Decree**

If Home Depot has not already done so prior to the Approval Date, then not later than two months after the Approval Date, and thereafter at least once each subsequent calendar year during the term of the Decree, each District Manager and each Store Manager in the Company's West Coast Division stores shall attend a meeting (or one in a series of meetings) scheduled and conducted by the Compliance Official, or his or her trained designee, to review Home Depot's plan for compliance with the terms of the Decree. At these meetings, the following topics shall be reviewed and discussed: (a) compliance with the Decree; (b) equal employment opportunity for women; (c) federal, state and Company prohibitions of workplace sexual harassment and retaliation; (d) diversity training; and (e) other topics that will encourage equal employment opportunity in recruiting, hiring, qualifying, training, promoting and retaining females. The first such meeting shall involve not less than two hours. Meetings in subsequent calendar years shall involve not less than one hour. Attendance at such meetings by each District Manager and Store Manager shall be expected. Such meetings may be in conjunction with other Company business, at the Company's discretion, and may be organized geographically in such fashion as the Company deems appropriate.

D. **Additional Training of Assistant Managers**

1. During the term of this Decree, Assistant Managers in the Company's West Coast Division stores shall receive training on equal employment opportunity, to include the following topics: (a) compliance with the Decree; (b) equal employment opportunity for women; (c) federal, state and Company prohibitions of workplace sexual harassment and retaliation; (d) diversity training; and (e) other topics that will encourage equal employment in recruiting, hiring, qualifying, training, promoting and retaining females. Such training may be delivered in live "discussion" format, video format, written materials, or any combination of these or other formats, provided, however, that such training that occurs within the first twelve months following the Approval Date shall not be provided to participants solely through written materials. No less than two hours shall be devoted to the training on these topics for each participant, within twelve months following (a) the Approval Date, or (b) the date of the participant's promotion to a

management position, whichever occurs later. In addition, in each two-year period beginning January 1, 1999, the Company shall schedule, and Assistant Managers in the Company's West Coast Division Stores are expected to attend, at least two hours of training on such subjects.

2. The training described in Section XII.D. 1., may be held in conjunction with other Company business, at the Company's discretion, and may be organized geographically in such fashion as the Company deems appropriate.

E. Department Supervisors

1. For purposes of this Section, the term "Department Supervisor" shall include the Department Supervisor of each Merchandising department.

2. During the term of this Decree, Department Supervisors in Home Depot's West Coast Division shall receive, as part of their Department Supervisor Training, training in the following topics: (a) compliance with the Decree; (b) equal employment opportunity for women; (c) federal, state and Company prohibitions of workplace sexual harassment and retaliation; (d) diversity training; and (e) other topics that will encourage equal employment in recruiting, hiring, qualifying, training, promoting and retaining females. Such training may be delivered in live "discussion" format, video format, written materials, or any combination of these or other formats, provided, however, that such training that occurs within the first twelve months following the Approval Date shall not be provided to participants solely through written materials. No less than two hours shall be devoted to the training on these topics for each participant, within twelve months following (a) the Approval Date, or (b) the date of the participant's promotion to a Department Supervisor position, whichever occurs later. In addition, in each two-year period beginning January 1, 1999, the Company shall schedule at least two hours of training on such subjects for each Department Supervisor in the Company's West Coast Division stores at the time such training is provided, and inform Department Supervisors that participation is expected.

3. All incumbent Department Supervisors will be scheduled to receive this portion of Department Supervisor Training within twelve (12) months of the Approval Date if they have not been promoted to Assistant Store Manager.

F. **Diversity Training for Hourly Associates**

Home Depot shall, through its "Respect" program, provide each new hourly West Coast Division Associate with diversity training as part of his or her new employee orientation.

G. **Training of Human Resources Personnel Regarding the Consent Decree**

Unless it has already done so prior to the Approval Date, within ninety (90) days following the Approval Date, Home Depot will develop and implement a training program for its West Coast Division Human Resources staff Associates who have substantive responsibilities related to compliance with fair employment practice laws and/or the application of consistency and objectivity in the placement and promotion process. New Human Resources Associates staff with such responsibilities shall receive such training within sixty (60) days of their date of entry into such position. Such training shall include, but not be limited to: (a) federal and state equal employment opportunity laws, including but not limited to the general provisions of these laws, the bases on which discrimination is prohibited under these laws, the identity, roles and responsibilities of agencies established to enforce these laws, and the principles and objectives underlying these laws (including but not limited to job relatedness); (b) the application of equal employment opportunity to typical employment situations, including but not limited to the development and completion of employee performance appraisals, training and other career advancement opportunities, and general supervision of Associates without engaging in either Gender Discrimination or gender stereotyping; (c) review of the provisions and requirements of the Decree; (d) review of the internal complaint procedure; (e) the role and responsibility of the Human Resources Department and staff; and (f) supervisory follow-ups of EEO complaints, including but not limited to, prohibition against retaliation, working with the complainant and discipline of and other remedial measures to be taken with the offender.

H. **Product Knowledge ("PK") Training**

All West Coast Division Associates will be informed that PK Basic Training, PK Project Training, and PK advanced product knowledge training will be made available to all Associates through department-specific self-study courses.

1. **Access to Product Knowledge Self-Study Courses.**

Associates who wish to move from an operations position to a sales position, and wish to obtain product knowledge, will have access to training through Product Knowledge self-study courses. All Associates may take PK Basics Training, PK Project Training, and PK Advanced Product Knowledge Training, which consist of department-specific, self-study courses. These courses enhance the Associates' general knowledge, assist them in obtaining relevant experience, assist them in determining a career path and help prepare them for new positions. Information about these self-study opportunities will be included in the "Home Depot Jobs Brochure" (see Section XIII.A.3.), the "Home Depot Standard Operating Procedures Manual," and the "Orientation Materials Associate Guide". In each Associate break area, information about PK self-study course materials will be available, and an Associate may take the courses at his or her own pace.

2. **Basic Product Knowledge Training for Cashiers.**

Cashiers will be required to take Home Depot's Product Knowledge Basics ("PK Cashier") course, which is designed for cashiers. This course is a condensed version of PK Basics and explains the core components of each department in a store. This course is designed to give cashiers a basic knowledge about Home Depot products and may help cashiers develop an initial interest in a specific sales department or departments. Based upon their interest and motivation, cashiers can participate in any product knowledge self-study program.

3. **Dissemination of Information About Product Knowledge Classes.**

The Company will disseminate to all Associates of West Coast Division stores information about the time, place, and subject of PK classes. This information describing product knowledge training ("Product Knowledge Training Calendars") shall be posted in a designated area in each West Coast Division store on a monthly basis. Information about PK Basics self-study courses will be available in each Associate break area.

4. **Provision of Product Knowledge Classes.**

The Company will use its Best Efforts to make product knowledge classes available to each Associate who has asked to participate in product knowledge classes, consistent

with an Associate's job interests as reflected by the JPP, the number of people who can participate in a class, and the legitimate needs of the business. If the training is specific to a certain department, Associates in that department or adjacent departments will have first choice in attending the training. If there is additional room, Associates who have expressed an interest in working in that department through the JPP will be able to attend the class on a first-come-first-served basis.

5. **Record-Keeping.**

Home Depot will maintain a record of the PK training each Associate receives, through a training tracking system to be established by Home Depot.

XIII. JOB PREFERENCE PROCESS/ABOVE-STORE POSITIONS/EVALUATIONS/ COMPENSATION

A. Home Depot's Job Preference Process for Selecting Store Management and Non Management Positions

1. Standard for Establishing a Job Preference Process.

a. On or before August 1, 1998, Home Depot shall have implemented a Job Preference Process ("JPP") system, as described generally in Sections XIII.A.2.-3., throughout the retail store operations of Home Depot's West Coast Division.

b. The purposes of the JPP include the following: (i) to improve the information available to Home Depot's management in making promotion and employee development and training decisions; (ii) to provide a systematic Division-wide method, consistent with equal employment opportunity, for Home Depot Associates to make informed and documented decisions about their career preferences; (iii) to provide a systematic framework within which Home Depot will incorporate such Associate preferences into its retail store promotion and Associate development and training decisions; and (iv) to establish a meaningful basis for setting Benchmarks pursuant to Section XIII.C.

2. Communications.

a. Information about the JPP will be disseminated to Associates on or before August 1, 1998. On or before July 1, 1998, Home Depot shall publish a notification in

"Doings at the Depot" describing the JPP system and the time of its anticipated introduction, and shall post such information in each West Coast Division store.

b. The JPP will also be communicated to Associates and external applicants in the Home Depot Jobs Brochure. (See Section XIII.B.1.c.)

3. **The Internal Job Preference Process for Home Depot Associates.**

a. On or before August 15, 1998, Associates will be able to state their job preferences on the in-store computer or by telephone through Interactive Voice Response ("IVR"). The in-store computer and the IVR will request the following information from the Associate: (i) name, store location, current position, time in current position; (ii) the positions the Associate is interested in being considered for during the next six (6) months (including all Benchmark Positions); (iii) whether the Associate is aware of the minimum requirements for the job sought; and (iv) whether the Associate satisfies the minimum requirements. A chart depicting how Home Depot will carry out the JPP is attached as Exhibit D and a sample JPP form is attached as Exhibit E. Home Depot may modify this form as business needs dictate. If the form is modified in any material respect, a copy of the new form will be provided to Class Counsel, who will have ten (10) days to offer comment on the new form. If there is disagreement between the parties that is not resolved within thirty (30) days after Class Counsel offers comments, the parties shall utilize the dispute resolution process described in Section XI.

b. The initial registration of preferences shall be completed by August 27, 1998. If an Associate does not meet the minimum qualifications for the position sought but is able to take certain steps to do so prior to September 17, 1998, and subsequently communicates the fact that he or she has done so, he or she will be considered in the qualified pool.

c. Those Associates who have registered their interest for a job and meet the minimum qualifications for the job sought on September 17, 1998, and each six-month anniversary of September 17, 1998 for the duration of this Decree, will be in the internal qualified pool for the subsequent six (6) months.

d. Associates may indicate a new or a different job preference at any time by simply expressing their interest through the in-store computer or by IVR and will then be considered for open positions in jobs for which they register. However, because the JPP is a continuing process, Benchmarks will be measured pursuant to Section XIII.A.3.c.

e. Home Depot may propose alternative schedules and approaches with respect to the JPP set forth herein which are consistent with achievement of the substantive purposes described in this Section. For example, after the initial eighteen (18) months of experience under this JPP, Home Depot may propose to stagger the various locations' JPP schedules if deemed operationally preferable. If Home Depot makes such changes to the JPP, it shall provide Class Counsel with written notification of the proposed changes and the basis for proposing such changes. Class Counsel shall have thirty (30) days to provide written notice identifying the substance of and reasons for any objections to Home Depot's proposed changes and thereby commence the meet and confer and enforcement process set forth in Section XI. If Class Counsel do not provide such written notice of objections and reasons within the thirty-day period, then such changes will be deemed acceptable. In such event, Home Depot may immediately implement the changes and cannot be deemed in non-compliance with the Decree.

f. Material changes to the JPP (e.g., determining that the JPP is not feasible for certain management positions, or that the registration interval should be greater than six months) would constitute modifications invoking the procedures set forth in Section IX.C, if Class Counsel considers such changes to be at material variance from the purposes set forth in Section XIII.A.1.b.

g. Nothing herein shall preclude Home Depot from making administrative changes to the details of the JPP without notice to Class Counsel, as long as such changes are not at material variance with the JPP or the purposes set forth in Section XIII.A.1.b.

h. An Associate who requests a printout of his or her completed JPP registration shall be provided with one.

B. **Job Preference Process for External Applicants**

1. **Store Applicants.**

a. External applicants will express their interest by filing an application for employment after being provided a copy of the Home Depot Jobs Brochure. Each Home Depot Store location shall designate an area for applicants to apply for jobs at the stores. This designated area will include an information center and a computerized job application. The information available to each applicant will be a Home Depot Jobs Brochure ("HDJB"), which contains a summary description of all entry-level jobs within the stores. Applicants have the opportunity to review the HDJB and thereafter determine the job or jobs for which they want to be considered. Applicants will then complete computerized employment applications and identify the specific positions being applied for. The application process shall involve minimal interaction with Home Depot managers or Associates, thus promoting an applicant's informed yet non-suggestive consideration of various job positions. The computerized application process will be developed and implemented on or before August 1, 1998. A sample computerized employment application screen is attached, as Exhibit F.

b. The computer application shall list both Sales (lumber/building/millwork, floor and wall, paint, hardware/tools, plumbing, electrical/lighting, garden, décor, kitchen and bath) and Operations (cashier, receiving, lot attendant, computer room/bookkeeping, administrative/order processing, truck driver) positions.

c. On or before March 1, 1998, Home Depot will develop and publish the Home Depot Jobs Brochure. The brochure will contain a summary job description for all of the positions in the store. It will also outline potential job paths. The summary descriptions will include (a) an overview of each job; (b) the major responsibilities and duties of each job; (c) the minimum skills required for each job; (d) the minimum qualifications needed to apply for each job; (e) the job classification or status (i.e. exempt/non-exempt and whether the Associate is eligible for a bonus); (f) the potential next step in terms of career progression; (g) the JPP; (h) comparative pay information by job; (i) an equal employment opportunity statement; and (j) Home Depot's disciplinary policy regarding Gender Discrimination.

d. The Home Depot Jobs Brochure will be made available to all applicants at a designated location in each store to assist them in completing their employment applications. The Brochure will also be available to Associates in Associate break areas.

e. Home Depot will also make available to all applicants and Associates, through the sales associate selection system, an informational CD Rom describing the Sales Associate position. The CD Rom shall include footage of women working in the Sales Associate position.

2. **External Applicants For Management Jobs.**

a. External Management applicants who go directly to a store to apply for an Assistant Store Manager ("ASM") position will receive a Home Depot Jobs Brochure and a handout including the phone numbers and addresses for the local District Office's Human Resources Manager ("HRM") or Staffing/Development Manager so that they can apply at the appropriate location.

b. External Management applicants who go directly to district offices to apply for ASM positions will receive a Home Depot Jobs Brochure. Applicants will deal directly with and be interviewed by the local HRM or Staffing/Development Manager for initial screening prior to final selection at the district level.

c. External Management applicants who go directly to a store to apply for a Department Supervisor position will be given a Home Depot Jobs Brochure. Selection for this position will occur at the store level.

C. **Selection Standards and Minimum Qualifications**

1. Home Depot will retain the right, under this Decree, to maintain its existing Selection Standards and Minimum Qualifications, as set forth in Section XIII.C. and Exhibit A for all positions, and to develop and implement new Selection Standards and Minimum Qualifications, subject only to the limitations stated in Section XIII.C. of the Decree.

2. If Home Depot's use of any Minimum Qualification currently maintained or implemented in the future for any Benchmark Position is determined to have an adverse impact on female Associates, and/or applicants for hire, Home Depot shall discontinue the use of such

Minimum Qualification, or modify it to eliminate the adverse impact, unless, under applicable law, Home Depot believes it can establish that the Minimum Qualification is job related for the job position in question and consistent with business necessity.

3. If Home Depot plans to use or plans to continue using for a Benchmark Position a Minimum Qualification that has been determined to have caused an adverse impact on females, Home Depot shall notify Class Counsel of its validation evidence or any other justification supporting the use of the Minimum Qualification. If Class Counsel does not agree that Home Depot's use of the Minimum Qualification is in accordance with applicable law, then any party may initiate the dispute resolution procedures set forth in Section XI., and, if necessary, request that the Court resolve the dispute pursuant to the procedures set forth in Section XI.

4. The Minimum Qualifications for each of the Benchmark Positions that Home Depot may use are listed in Exhibit A. No change of a Minimum Qualification may be made without prior notification to Class Counsel.

5. Home Depot shall not increase the length of any job service requirement that is set forth as a Minimum Qualification on Exhibit A unless Home Depot first provides to Class Counsel its validation evidence for the position in question and establishes that the Minimum Qualification is consistent with business necessity. If Class Counsel and Home Depot do not agree that Home Depot's intended use of the increased job service requirement is in accordance with applicable law, then any party may initiate the dispute resolution procedures set forth in Section XI., and, if necessary, request that the Court resolve the dispute pursuant to the procedures set forth in Section XI., Home Depot agrees that it will not increase the relevant job service Minimum Qualification(s) set forth on Exhibit A pending resolution of any such dispute, provided that the dispute is resolved within ninety (90) days of the date that Home Depot responds to Plaintiffs' notice as provided in Section XI.C.1.

6. Whether a Minimum Qualification will be considered to cause an adverse impact will be determined pursuant to applicable Title VII law and the following principles:

a. Adverse impact of any Minimum Qualification used on a Division-wide basis will be assessed on a Division-wide basis.

b. Adverse impact assessments regarding all Minimum Qualifications will be made no less frequently than annually; however, any adverse impact assessment may calculate the cumulative impact of a Minimum Qualification over a longer reasonable period of time.

c. For purposes of calculating adverse impact of a Minimum Qualification for a Benchmark Position, the relevant available pool will consist of all Associates who timely registered interest in the position and have not been earlier screened out based on the application of an earlier-applied Minimum Qualification.

7. The parties agree that any minimum age qualification maintained to meet the requirements of federal, state, or local law, and willingness to work flexible hours (including a minimum of 55 hours per week for Assistant Store Manager and Store Manager) and passing a drug test, shall be presumed to be job related and consistent with business necessity, and hence not to be a violation of this Decree. The information that has been provided to Class Counsel about the Sales Associate test indicates that the test does not have an adverse impact on women, is valid, and was developed consistent with professional standards.

D. Benchmarks

1. General Principles.

a. Home Depot shall use its Best Efforts to meet the selection Benchmark set forth in this section. These Benchmarks do not establish maximum rates for the selection of females, rather these Benchmarks establish selection rates that Home Depot shall use its Best Efforts to achieve.

b. In attempting to meet these Benchmarks, Home Depot shall not be required to select unqualified persons or to displace any incumbent employee from his or her position. These Benchmarks are not quotas; they are Benchmarks designed to afford guidance as to whether Home Depot is making selection decisions in such a way as to afford equal employment opportunity.

c. Failure to achieve a Benchmark by a fraction of a person shall not be deemed to constitute a failure to achieve a Benchmark under the Decree.

d. Home Depot's failure to achieve a Benchmark for a particular period will not be considered a violation of this Decree unless Home Depot has failed to use its Best Efforts to meet the Benchmarks. Should Home Depot demonstrate that: (i) the proportion of good faith offers made to females as compared to males was at least as high as the Benchmark percentage, or (ii) significant differences in the relative experience, skill or other qualification of males and females in the pool explain the failure to achieve the Benchmark (provided that such experience, skill, or other qualifications are job-related for the job position in question and consistent with business necessity), such evidence will conclusively establish that Best Efforts were used. Nothing in Section XIII.D.1.d. shall be interpreted to imply that Best Efforts could not also be shown by other appropriate evidence.

e. If Home Depot establishes a new merchandising job classification in the West Coast Division Stores, Home Depot shall so inform Class Counsel. Class Counsel shall inform Home Depot if they believe that this new position should be included among the Benchmark Positions. For example, Class Counsel may assert that the new position should be treated as a Benchmark Position if the new position covers job responsibilities presently performed by Associates working in one or more jobs included among the current Benchmark Positions. If the parties do not agree as to whether the new job position should be included as a Benchmark Position, then the dispute shall be resolved pursuant to the procedures set forth in Section XI.

2. **Benchmark Positions in Home Depot's West Coast Division Stores.**

a. Benchmarks shall be established for the positions determined as "Benchmark Positions" in Section III.

b. Because Associates may participate in the JPP at any time and because applicants may apply at any time, the pool is not static. Benchmarks will be determined by taking a snapshot of the internal and external pools for all Benchmark Positions every six months, beginning on September 17, 1998. Separate pools will be established for Eligible Associates and Eligible Applicants with respect to each Benchmark Position. All vacancies that

occur within the six-month period following the JPP Semi-Annual Anniversary Date shall be filled with candidates from within the appropriate Eligible Associate or Eligible Applicant pools.

c. Home Depot will calculate the Benchmarks pursuant to the procedures set forth in this Section, and shall distribute a list of those Benchmarks, along with the underlying calculations, to Class Counsel within thirty (30) days following the close of the registration and screening process for that particular position. (The screening process will be considered closed when the pools of Eligible Associates have been determined.)

d. Calculation of Benchmarks for Internal Pools. The Benchmark percentage for the Internal Pool for each Benchmark Position shall be determined by dividing (i) the total number of female Eligible Associates in the Benchmark-Related Geographical Area for such position by (ii) the total number of Eligible Associates in the Benchmark-Related Geographical Area for such position. Benchmarks will be stated as percentages, rounded up or down consistent with standard arithmetic practice. For each Benchmark Position, in assessing achievement of the Benchmark at the conclusion of the measurement period, the actual number of female Associates moved into the Benchmark Position from other job classifications will be compared to the Benchmark number, calculated by multiplying the pertinent Benchmark percentage by the number of moves into the pertinent Benchmark Position from other job classifications in the Benchmark-Related Geographical Area during the measurement period. Benchmarks will be calculated to one decimal place, rounded up to the nearest one-tenth. Example: The Benchmark-Related Geographical Area for the Sales Associate position covers the Store in which the Associate works or the Store in which the applicant applies. If, throughout the Store, 110 Associates are in the qualified pool for Sales Associate positions, and if 31 of those Eligible Associates are female, then the Benchmark for Sales Associate would be 28.2 percent, which would then be rounded down to 28 percent. Therefore, for the following six-month period, Home Depot would use its Best Efforts to select females for 28 percent of the Sales Associate vacancies. If, at the conclusion of the six-month period there had been 14 moves to Sales Associate positions from other job classifications, then the Benchmark would be to have filled

3.92 (rounded up to 4.0 pursuant to accepted arithmetical practices) of those Sales Associate openings with female Associates.

e. Calculation of Benchmarks for External Pools. The Benchmark percentage for the External Pool for each Benchmark Position shall be determined by dividing (i) the total number of female Eligible Applicants in the Benchmark-Related Geographical Area for such position by (ii) the total number of Eligible Applicants in the Benchmark-Related Geographical for such position.

f. Newly Adopted Positions. Any other West Coast Division store management/supervisory positions adopted by the Company for general use (as opposed to limited pilot programs) shall be added to and included in the JPP system.

E. Above-Store-Level Positions

Home Depot recognizes the desirability and importance of having qualified females occupying management positions above the store level, including District Manager and Regional Vice-President. Consistent with that principle, Home Depot agrees to give full and careful consideration to promoting qualified female Associates into such positions.

F. Evaluation and Incentive Programs.

1. All management and supervisory performance appraisal forms for the job positions of Regional Vice-President, District Manager, Store Manager, Assistant Store Manager and Merchandising Department Supervisor have been or will be revised in order to include managing diversity in the workforce as a measure of performance.

2. On at least an annual basis, the Compliance Official shall have a detailed in-person discussion with the Regional Vice-President and each District Manager in the West Coast Division, reviewing with each of those managers the performance of the Division and/or the pertinent District regarding compliance with this Decree. The Compliance Official may designate the Regional Vice-President to have this discussion with one or more District Manager.

3. Prior to any individual's promotion to a Regional Vice-President, District Manager, Store Manager or Assistant Store Manager position, the Company shall consider the individual's performance with respect to meeting the Company's obligations under the Decree.

G. Standards Concerning the Establishment of Compensation Rates

1. Considerations Used to Determine Associate Pay Levels.

a. Internal Consideration. Current pay levels for Associates in the same job based on comparable levels of skills, and job knowledge and experience.

b. External Consideration. Competitive labor market data for the geographical area in which the store is located. This data will be used to determine the salary ranges that Home Depot's competitors pay their Associates for similar jobs in the relevant labor market. It is estimated that such labor data is available for jobs in which approximately 80% of the Associates in the stores work.

c. If no competitive labor market data exists, pay levels will be determined by comparing Home Depot jobs to comparable jobs for which Home Depot has data, based on comparable levels of skills, duties/responsibilities, and job knowledge.

2. Determining Pay Levels.

a. Once a range of pay data is determined for competitive jobs in a particular labor market, the pay data will be divided into the following percentiles: 25th, 50th, 75th, and 90th.

b. Competitive labor market pay data at the 25th, 50th, 75th, and 90th percentiles for comparable jobs will be provided to store management. Managers will determine initial pay levels for new hires determining the percentile area that best fits the individual Associate. Factors such as an Associate's skills, job knowledge and experience will be used to determine the initial pay rate assigned to the Associate. For example, new hires who meet the minimum qualifications for the job will typically be paid at or above the 25th percentile.

c. To increase consistency, initial pay rates of new hires will be compared to those associates in the same job with similar levels of skill, experience and job knowledge.

3. Analysis of Compensation Paid to Sales Associates.

a. Within sixty (60) days of the end of Decree Year 2, Home Depot shall conduct a statistical analysis comparing the initial rates of pay of male and female

Associates who were hired into the Sales Associate position during the period from the Approval Date through the end of Decree Year 2. The purpose of this analysis is to determine whether or not there is a statistically significant difference in the initial pay rates of male and female Associates hired into the Sales Associate position in either Decree Year 1 or Decree Year 2. If this analysis does not show any statistically significant disparity then Home Depot does not need to perform any such analysis at the end of Decree Year 3.

b. If the initial pay analysis conducted at the end of Decree Year 2 shows a statistically significant difference, then within sixty (60) days of the end of Decree Year 3, Home Depot shall conduct a statistical analysis comparing the initial pay rates of male and female associates who were hired into the Sales Associate position during Decree Year 3. The purpose of this analysis is to determine whether or not there is a statistically significant difference in the initial pay rates of male and female Associates hired into the Sales Associate position during Decree Year 3.

c. Within sixty (60) days of the end of Decree Year 4, Home Depot shall conduct two statistical analyses:

(i) Home Depot shall conduct a statistical analysis comparing the initial pay rates of male and female Associates who were hired into the Sales Associate position during Decree Years 3 and 4 in order to determine whether or not there is a statistical significant difference in the initial pay rates of male and female Associates hired into the Sales Associate position in either Decree Year 3 or Decree Year 4.

(ii) Home Depot shall conduct a statistical analysis of the pay rate at the end of Decree Year 4 of the individuals who were included in the analysis described in section 3.a., above, and who are in the Sales Associate position at the end of Decree Year 4. The purpose of this analysis is to determine whether or not there is a statistically significant difference in the pay rates of men and women in the Sales Associate position who were in that position at the end of Decree Year 4 and who were initially hired into that position in either Decree Year 1 or Decree Year 2.

d. If the initial pay analysis conducted at the end of Decree Year 4, see Section 3.c., above, shows a statistically significant difference, then within sixty (60) days of the end of Decree Year 5, Home Depot shall conduct a statistical analysis comparing the initial pay rates of male and female Associates who were hired into the Sales Associate position during Decree Year 5. The purpose of this analysis is to determine whether or not there is a statistically significant difference in the initial pay rates of male and female Associates hired into the Sales Associate position during Decree Year 5.

e. If there is a statistically significant pay difference adverse to women shown in one or more of the pay analyses described in this Section, then Home Depot shall eliminate such adverse impact unless Home Depot establishes that such adverse impact in pay is the result of a factor (or combination of factors) other than gender and that such factor (or factors) are job related for the job position in question and consistent with business necessity.

f. Home Depot may use an appropriate statistical sample in performing any of the statistical analyses required by this section.

g. Within fifteen (15) days of completing any analysis required by this section, Home Depot shall provide Class Counsel with a report describing the methodology for and results obtained by such analysis.

XIV. REPORTING AND RECORDKEEPING

A. Documents to Be Preserved for the Duration of the Decree.

Home Depot shall retain the following employment-related records for the duration of the Decree or as required by state or federal law, whichever is longer:

1. A computer readable database or databases containing computerized payroll and personnel information for Associates in the West Coast Division for the time period covered by the Decree. The payroll and personnel information contained in the database or databases shall include the information contained in Home Depot's Human Resources Information Systems ("HRIS").

2. A computer readable database or databases of JPP registration which includes the dates when completed by the Associates, the Associates' names, social security numbers, and all computer readable information contained on the completed JPP.

3. Personnel-related documents (or scanned copies or other computer-based storage thereof) of persons hired, including applications, performance rating, discipline, counseling, and discharge records, all declined offers of promotion for Benchmark Positions and Employee Action Notices.

4. Performance evaluation forms for all Associates (including managers).

5. Attendance records for all Associates, to the extent that attendance is reflected by Home Depot's KRONOS system.

6. Scores on the Validated Sales Associate test of persons selected to be Sales Associates, together with copies of all versions of the Validated Sales Associate test administered, a record of to whom it was administered and analyses of whether the test has adverse impact on females.

7. Drug test results for all Associates.

8. Records relating to whether or not an employee or applicant is able to work flexible hours.

9. A record of the product training each employee receives.

10. All versions of the Home Depot Jobs Brochure (see Section XIII.A.3.), Informational CD Rom regarding the Sales Associate position (see Section XIII.A.3.), and Summary Leaflets (see Section XII), and a record of the dates on which they were used.

11. All formal internal complaints filed pursuant to Section X., regarding alleged violations of this Decree, or of Gender Discrimination, the written findings of the investigation and, when utilized, the written request for review and the written statement of the outcome of the review by the DERM or his/her designee.

12. The compensation analyses provided for in Section XIII.E.3.

13. Nothing in this Decree shall be interpreted to relieve Home Depot of any recordkeeping requirements otherwise imposed by applicable Federal or State law.

B. Documents to Be Maintained for Two Years

The following documents shall be maintained for two years from the date the document is created, or as required by state or federal law, whichever is longer:

1. All completed JPP data separated according to the store in which the Associate completed the JPP.

2. All documents expressly required to be created by this Decree for which a longer time period is not specified.

C. Access to Documents

1. Class Counsel shall, upon reasonable notice, be entitled to review all documents required to be maintained or created by the express terms of this Decree, except, however, that Class Counsel shall not be entitled to review any such documents that are protected by attorney-client or work product privilege.

2. All documents required to be maintained by the express terms of the Decree are and shall be treated as confidential business records. In light of Class Counsel's continuing role in the administration of this Decree, in which Class Counsel will be provided access to such documents on a confidential basis in order to investigate and resolve potential non-compliance with the Decree, Class Counsel shall not divulge any such documents to any third party unless so ordered by the Court after notice to Home Depot and an opportunity for Home Depot to object to such disclosure and be heard. Upon expiration of this Decree, Class Counsel shall promptly return to Home Depot any and all documents Home Depot furnished under this Decree.

D. Reporting Schedule

Within three weeks of the completion of the initial Benchmark period, and at six-month intervals thereafter through the Term of this Consent Decree, Home Depot shall provide Progress Reports to Class Counsel on the Company's compliance with the Decree's requirements.

E. **Contents of the Semi-Annual Progress Reports**

The Semi-Annual Progress Reports described in Section XIV.D. shall include the following information:

1. A description of any revisions to the Minimum Qualifications set forth in Exhibit A that are implemented during the reporting period (even though reported separately prior to any revision).

2. A description of any revisions made to the JPP, except those of an administrative nature (even though reported separately prior to any revision).

3. A description of any revisions to any store job descriptions that are implemented during the reporting period, including, but not limited to, the addition of any new job classifications (even though reported separately).

4. A description of any revisions to the Harassment Policy, attached as Exhibit B, that are implemented during the reporting period (even though reported separately prior to any revision being implemented).

5. A chart or charts displaying the number and percentage of male and female Associates who registered their interest for each Benchmark position covered by the JPP system during the reporting period; and of those Associates who registered their interest, the number and percentage of male and female Associates who met the screen for Minimum Qualifications for each position. This information shall be reported on a West Coast Division-wide basis.

6. A chart or charts displaying the number and percentage of male and female Associates who were promoted or otherwise moved from another job classification to any Benchmark Position during the semi-annual JPP cycles concluded within the reporting period; and the Benchmark and target for each position, and the numerical difference between each target and the number of female promoted or moved. This information shall be reported on a West Coast Division-wide basis.

7. Lists of all individuals selected for management Benchmark Positions with gender identification.

8. A description of the implementation and delivery of the training required by Sections XII.B., XII.C., XII.D., XII.E., and lists of those in attendance.

9. Copies of all training materials used by the Company during the reporting period to train managers and Human Resources staff Associates regarding equal employment opportunity and/or compliance with this Decree, pursuant to Section XII.

10. An organizational chart or charts, which lists all Human Resource staff who have substantive responsibilities related to compliance with this Decree or fair employment practice laws and which displays the Human Resources Department's reporting and supervisory structure.

11. Certification by the Compliance Official that he or she has used Best Efforts to see that the Notice and Summary of Consent Decree as described in Section X.E.1. has been provided to Associates as required by the Decree.

12. Certification by the Compliance Official that he or she has used Best Efforts to see that the summary leaflet described in Section XII has been and remains posted.

13. A summary of the formal internal complaints received during the reporting period alleging violations of this Decree and/or Gender Discrimination. This summary shall be kept confidential and shall not be provided to any person or entity not a party to this Consent Decree. This summary shall include:

a. a designation regarding whether the complaint was one of a violation of the decree, or of Gender Discrimination, or both;

b. the name, job classification, store number and Social Security number of the complainant(s);

c. the name of the investigator designated for the complaint;

d. the results of the investigation undertaken in response to such complaint, including the remedial and/or disciplinary measures imposed, if any, and the name of the manager(s) or other Associate(s) disciplined; and

e. whether any internal appeal was filed and the disposition of the appeal.

XV. MONETARY RELIEF, NOTICE AND CLAIMS PROCEDURE

A. Monetary Settlement Fund

1. Creation of Monetary Settlement Fund.

Home Depot shall allocate the sum of Sixty Five Million Dollars $65,000,000.00 (the "Fund" or "Monetary Settlement Fund") for the purpose of providing individual monetary awards to the Plaintiffs, Class Representatives, and other eligible members of the Settlement Class in accordance with the provisions of this Section.

2. Allocation of the Fund.

The amount allocated in accordance with Section XV.A.1., above, shall be distributed in the following manner:

a. Each Class Representative who does not opt out shall receive the sum of $30,690.00, in full settlement of all monetary claims of the Class Representative against Home Depot in this action, including but not limited to back pay, front pay, fringe benefits and emotional distress; the sum of $46,500.00, in recognition of the risks and potential liability related to being a Class Representative in this class action litigation; and the sum of $15,810.00, in consideration for the time and effort each expended in serving as a Class Representative in the litigation. Payment in the amounts specified above shall be made by Home Depot not later than fourteen (14) days after the Final Approval Date to each Class Representative who does not opt out.

b. Plaintiff, Jamie Wilson, if she does not opt out, shall receive the sum of $15,345.00, in full settlement of all monetary claims she has against Home Depot in this action, including but not limited to back pay, front pay, fringe benefits and emotional distress; and the sum of $23,250.00 in recognition of the risk and potential liability related to being a Plaintiff; and the sum of $7,905.00 in consideration for the time and effort she expended in the litigation. Payment in the amounts specified above shall be made by Home Depot not later than fourteen (14) days after the Final Approval Date to Plaintiff Jamie Wilson, assuming she does not opt out.

c. Each Settlement Class member, exclusive of the Plaintiff and Class Representatives, who does not opt out and who has asserted her claims in the form of a sworn

declaration filed with the Court or deposition in this action, shall be entitled to a monetary award of Four Thousand Dollars ($4,000.00), in recognition of the assistance she provided in prosecuting this litigation. A list of the class members entitled to such awards is reflected in Exhibit G, attached hereto. Such payments shall not preclude the class member from filing a claim for monetary relief under this Decree and shall be in addition to any award the class member may be determined eligible to receive under the filing provisions of this Decree.

Payment of the monetary awards to class members under this subparagraph shall be made by Home Depot not later than fourteen (14) days after the Final Approval Date.

d. One Hundred Thousand Dollars ($100,000.00) of the Fund shall be allocated as a "Reserve Fund" to be used to pay any otherwise valid claims which are excluded from the final list of qualified claimants, see Section XV., below, through error or omission of Class Counsel, the Claims Administrator, Home Depot or its counsel.

e. The remainder of the Fund, after allocation of the amounts specified in subparagraphs a.-d., above, shall be allocated as follows:

(i) A percentage equal to the proportion of timely and valid claims filed by Rejected Applicant Class Members to the total number of timely and valid claims filed by all eligible Settlement Class Members, but no more than 10% of the remainder of the Fund after allocation of the amounts specified in subparagraphs a.-d., above, and less any pro rata deductions pursuant to Section XV.D., shall be allocated to pay, in accordance with the provisions of Sections XV.A.3. and XV.E.7., the monetary claims of otherwise eligible Rejected Applicant Class Members. Thus, for example, if 3% of all timely and valid claims filed by all Settlement Class Members are filed by Rejected Applicant Class Members, then 3% of the Monetary Settlement Fund, after deduction of the payments described in subparagraphs a.-d. above, shall be allocated to pay the claims of Rejected Applicant Class Members whose claims are determined to be timely and valid; and

(ii) The remainder of the Fund, after allocation of the percentage of the Fund to be determined in accordance with subparagraph (i) above, but in no event less than 90% of the Fund balance remaining after the distributions made pursuant to Sections

XV.A.2.a.-d., and less any pro rata deductions pursuant to Section XV.D., shall be allocated to pay, in accordance with the provisions of Sections XV.A.4. and XV.E.7., the monetary claims of otherwise eligible Employee Settlement Class Members.

3. **Awards to Rejected Applicant Class Members.**

a. **Eligibility for Payment.**

To be eligible for payment of a monetary award from that portion of the Fund allocated to pay the claims of Rejected Applicant Class Members, an individual must:

(i) Return a completed Claim Form signed under penalty of perjury postmarked no later than the date established under this Decree for the submission of claims.

(ii) State (and, upon challenge based on reasonable grounds, establish) that she is a female;

(iii) Provide her full name, address, day and evening telephone numbers, social security number, any other names by which she has been known, the date and location of her rejected application for employment with Home Depot; the name(s) of any Home Depot employee(s), if known, with whom she interviewed in connection with her rejected application for employment with Home Depot; and the facts upon which the claimant believes she was qualified for employment as a Sales Associate or Assistant or Associate Manager with Home Depot;

(iv) State that she did not reject an offer of employment as a Sales Associate or Assistant or Associate Manager with Home Depot in connection with her application; and

(v) Have her claim determined to be timely and valid by the Claims Administrator and/or Class Counsel in accordance with the provisions of Section XV.E.7 or Special Master, in accordance with the provisions of Section XV.E.10-11.

b. **Determination of Award Amounts for Qualified Rejected Applicant Claimants.**

(i) The specific monetary award that will be paid to qualified Rejected Applicant Claimants who file timely claims that are determined to be valid in accordance with this Section will be determined by assignment of points as follows:

(a) Each claim of a qualified Rejected Applicant Class Member who claims to have applied for, been qualified for, and rejected for a Sales Associate position whose claim is determined to be timely and valid in accordance with the provisions of this Section, shall be credited with ten (10) points.

(b) Each claim of a qualified Rejected Applicant Class Member who claims to have applied for, been qualified for, and rejected for an Associate Manager Position with Home Depot whose claim is determined to be timely and valid in accordance with this Section shall be credited with eleven (11) points.

(c) Each claim of a qualified Rejected Applicant Class Member who claims to have applied for, been qualified for and rejected for an Assistant Manager Position with Home Depot whose claim is determined to be timely and valid in accordance with the provisions of this Section shall be credited with twelve (12) points.

(ii) The total points applicable to all qualified Rejected Applicant Claimants whose claims are determined to be timely and valid will be aggregated. Each qualified Rejected Applicant claimant's proportionate share of the total points will be determined and a claimant will be allocated her proportionate share of the Fund allocated for the payment of claims of qualified Rejected Applicant claimants under Section XV.A.2.c.(ii), above.

4. **Awards to Employee Class Members.**

a. **Eligibility for Payment.**

To be eligible for payment of a monetary award from that portion of the Fund allocated to pay the claims of Employee Class Members, an individual must:

(i) Return a claim form signed under penalty of perjury postmarked no later than the date established under this Decree for the submission of claims;

(ii) State (and upon challenge based on reasonable grounds, establish) that she is a female;

(iii) Provide her full name, current address, current day and evening telephone numbers, social security number, any other name(s) she used while employed by Home Depot, the dates and locations of and positions held during her employment with Home Depot;

(iv) State that she believes she may have been discriminated against on the basis of her gender in a term or condition of employment other than sexual harassment or retaliation for complaining about or opposing sexual harassment while employed by Home Depot during the Liability Period;

(v) Have her claim determined to be timely and valid by the Claims Administrator and/or Class Counsel in accordance with the provisions of Section XV.E.7. or Special Master, in accordance with the provisions of Section XV.E.10-11.

b. **Determination of Awards for Qualified Employee Class Members.**

(i) The specific monetary award that will be paid to qualified Employee Class Members who file timely claims that are finally determined to be valid in accordance with this Section will be determined by assignment of points for years of service.

(ii) Information regarding an Employee claimant's years of service will be obtained from or verified by documentation Home Depot will provide to Class Counsel and the Claims Administrator in accordance with the provisions of Section XV.B.1.a. and E.6.;

(iii) Allocation of points based on years of service shall be made in the following manner:

	SERVICE POINTS	
Employment for 1991 and before	1 point per year	
Employment for years 1992-1997	3	1992
	3	1993
	3	1994
	3	1995
	3	1996
	2	1997

Allocation of service points will be cumulative. A claimant may accumulate a maximum of fifteen (15) service points. In calculating the number of years of service for purposes of determining the allocation of points under this provision, associates serving fractions of a year shall be credited with service for that entire year.

(iv) The points for all qualified Employee Class Members whose claims are determined to be timely and valid will be aggregated. Each qualified Employee claimant's proportionate share of the total points for all qualified Employee claimants will then be determined and a claimant shall be allocated her proportionate share of the Fund allocated under Section XV.A.2.e.(ii), to pay the claims of qualified Employee Class Members.

5. Claims of Deceased Class Members.

Claims made on behalf of a deceased Rejected Applicant or Employee Class Member must be accompanied by a certified copy of the deceased class member's death certificate and must be filed by the administrator or legal representative of the estate of the deceased class member.

6. Allocation of Monetary Relief and Tax Treatment.

All monetary distributions to the Class Representatives, Plaintiffs, and other qualified Settlement Class Members shall be allocated by Home Depot between compensatory damages, back pay and front pay, and prejudgment interest. Home Depot shall calculate and withhold from the gross award of each qualified Settlement Class Member the amounts due for applicable federal, state and local taxes and the amount of the employee's share of F.I.C.A. on the back pay and front pay portion of the distribution. Home Depot also shall determine the employer's share of F.I.C.A. and other applicable employer payments and be responsible for

making those payments, which unlike the Settlement Class member's share of these withholding taxes, will not be deducted from the total class award. Home Depot shall distribute to each Settlement Class member who receives a monetary award, her respective W-2 and 1099 tax reporting forms and Home Depot shall make the respective tax reporting to the IRS or other appropriate agency. Settlement Class members shall be responsible for payment of income taxes owed to any governmental authority on distributions from the Fund. Neither the Claims Administrator, Class Counsel, nor Home Depot or its attorneys, will provide advice to class members concerning what taxes are owed. Settlement Class members should consult with a tax advisor if they have questions concerning their tax liabilities on distributions from the Fund.

B. Notice

1. Class Action Settlement Notice.

a. Mailed Notice.

Within five (5) business days following the Preliminary Approval Date, Home Depot shall prepare and deliver to Class Counsel and the Claims Administrator a computer disk containing the full names, social security numbers, birth dates, last-known addresses and last-known telephone numbers, start dates, and, if applicable, end dates of employment with Home Depot of all potential Employee Class Members (the "Mailed Notice Class List"). Class Counsel shall within five (5) business days following the Preliminary Approval Date, provide the Claims Administrator in computer readable format for inclusion on the Mailed Notice Class List, a list of all potential Employee and Rejected Application Class Members who are known to Class Counsel and their addresses. Prior to mailing the notice to individuals on the Mailed Notice Class List, the Claims Administrator shall update the Mailed Notice Class List with any new addresses for such individuals it may obtain from the National Change of Address System. On or before October 10, 1997, the Claims Administrator shall mail, via first class United States Mail, postage prepaid, notice of the class settlement in the form attached hereto as Exhibit H, to each person on the Mailed Notice Class List and claim forms in the forms attached hereto as Exhibit I, to all Employee Class Members and Exhibit J, to all Rejected Applicant Class Members on the Mailed

Notice Class List as updated with any new addresses obtained from the National Change of Address System.

b. Tracing of Mailed Notice and Claim Forms.

Not later than seven (7) days after receipt of any notice of class action settlement and/or claim form mailed under Section XV.B.1.a. or E.2. returned as "undeliverable," the Claims Administrator shall arrange through IRSC or a comparable service, for a computer database search for such class member and remail the notice and/or claim form to any additional address obtained for such class member.

c. Published Notice.

The Claims Administrator shall cause to be published notice of the class settlement in the form attached hereto as Exhibit K, in each of the newspapers listed and according to the schedule set out in Exhibit L.

d. Costs of Mailed Notices and Claim Forms, Tracings.

The expenses related to preparation and mailing of the class settlement approval notice and claim forms, tracings related to mailed notices and claim forms returned as undeliverable and publication of the notice of class settlement shall be paid by Home Depot.

C. Objections and Exclusions

1. Objections.

Class members who wish to present objections to the proposed settlement must do so in writing. Written objections shall be mailed to the Claims Administrator at Gilardi & Co., LLC, P.O. Box 7090, San Rafael, CA 94912-7090. Written objections must be received by the Claims Administrator on or before November 21, 1997. The Claims Administrator shall stamp the date received on the original of any objections it receives and serve copies of the objections on Class Counsel and Home Depot's counsel not later than two (2) business days after receipt thereof and shall file the date-stamped originals of any objections with the Clerk of the Court no later than five (5) business days prior to the date of the final approval hearing. The Claims Administrator shall retain copies of all written objections in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Decree.

2. **Exclusions.**

a. Consistent with Section VII of this Decree certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(3), for purposes of monetary relief, and in accordance with the requirements of Federal Rule of Civil Procedure 23(b)(3), any potential class member may request exclusion from the class for purposes of monetary relief only.

Potential class members who wish to exclude themselves from membership in the Settlement Class for purposes of participation in the monetary portion of the settlement must do so in writing, by filing with the Claims Administrator a signed and dated "opt-out" statement. Written opt-out statements shall be mailed to the Claims Administrator at Gilardi & Co., LLC, P.O. Box 7090, San Rafael, CA 94912-7090. Opt-out statements must be received by the Claims Administrator on or before November 21, 1997. Opt-out statements shall, at a minimum, contain the following language:

> "I understand that by requesting to be excluded from the class monetary settlement, I will receive no money from the settlement fund created in accordance with the Consent Decree entered into by Home Depot. I understand that if I am excluded from the class monetary settlement, I may bring a separate action seeking damages, however, I may receive nothing or less than I would have received if I had filed a claim under the class monetary settlement procedure. I also understand that I may not seek exclusion from the class for injunctive relief, and that I am bound by the injunctive provisions of the Consent Decree entered into by Home Depot."

Only those class members who request exclusion in the time and manner set forth herein shall be excluded from the class.

b. The Claims Administrator shall stamp the date received on the original of any opt-out statement received and serve copies of the statements on Class Counsel and Home Depot's counsel not later than two (2) business days following receipt thereof and shall file the date-stamped originals of any written opt-out statements with the Clerk of the Court not later than five (5) business days prior to the date of the final approval hearing. The Claims

Administrator shall retain copies of all opt-out statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Decree.

c. Pursuant to Federal Rule of Civil Procedure 23 (b)(3) and (c)(2), the terms and provisions of this Decree concerning monetary relief shall have no binding effect on any person who makes a timely request for exclusion in the manner required by this Decree.

d. Any class member who has already had her claim of gender discrimination adjudicated or settled is ineligible to receive any monies under this Consent Decree.

3. **Rescissions of Opt Outs and Withdrawals of Objections.**

a. The parties recognize that some class members who initially submit objections to this Consent Decree or request to be excluded from the monetary provisions of the Decree may upon further reflection, consultation or the provision of additional information regarding this Decree, wish to withdraw such objections or rescind such opt out statements.

The parties agree that class members shall be permitted to withdraw such objections or rescind such opt out statements by submitting a Withdrawal of Objection in the form attached as Exhibit M, or a Rescission of Opt Out Statement in the form attached as Exhibit N, to the Claims Administrator up to but no later than December 19, 1997.

b. The Claims Administrator shall stamp the date received on the original of any Withdrawal of Objections and Rescissions of Opt Out Statements it receives and serve copies of the Withdrawal of Objections and Rescissions of Opt Out Statements on Class counsel and counsel for Home Depot not later than two (2) business days after receipt thereof and shall file the date-stamped originals of any Withdrawals of Objections or Rescissions of Opt Out Statements with the Clerk of the Court not later than five (5) business days prior to the date of the final approval hearing. The Claims Administrator shall retain copies of all Withdrawals of

Objections and Rescissions of Opt Out Statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Decree.

D. Opt-Out Credits

1. In the event that any member of the Settlement class elects to opt-out pursuant to the procedures established in this Decree and in the Court's Order preliminarily approving the Decree, and within (12) months of the Approval Date such Settlement Class member timely files a civil action in any court alleging a claim of Gender Discrimination for acts occurring during the Liability Period, or timely files with the EEOC or a state or local FEP agency a charge of Gender Discrimination for acts occurring during the Liability Period, the amount of the Class Monetary Settlement Fund shall be decreased by an amount as set forth below ("the Opt-Out Credit"). Within thirty (30) days of service of the complaint in such a civil action or receipt of a notice of such a charge of Gender Discrimination, but not later than twelve and one-half (12 1/2) months after the Approval Date, Home Depot shall notify Class Counsel of the identities of all persons who have timely opted out of the Decree and timely filed such a civil action or charge of Gender Discrimination within twelve (12) months of the Approval Date, the identity of their attorney(s), and the courts or administrative agencies in which such persons have filed civil actions or charges. Any dispute with respect to Opt-Out Credits shall be resolved in accordance with the Dispute Resolution Procedures set forth in Section XI. of this Decree.

2. Home Depot shall receive no Opt-Out Credit for:

a. Any Settlement Class member who fails to file a timely request for exclusion in a manner that the Court holds to have satisfied the requirements of this Decree and the Court's Order preliminarily approving this Decree; and

b. Any Settlement Class member who, as of the Preliminary Approval Date, has commenced any civil action against Home Depot or any of its directors, officers, agents or associates in any federal, state or local court alleging a violation of federal, state or local law prohibiting Gender Discrimination.

3. Home Depot shall receive an Opt-Out Credit of One Hundred Fifty Thousand Dollars ($150,000.00) for each Settlement Class member who opts out and timely files a civil action or charge of Gender Discrimination as set forth in Section XV.F.1. and

a. Who has signed a declaration which was submitted to the Court by Class Counsel in this civil action;

b. Who has had charges alleging Gender Discrimination filed with the EEOC by Class Counsel, unless Class Counsel withdrew their representation of such individual prior to December 1, 1996; or

c. Who is a Class Representative or Plaintiff.

4. Home Depot shall receive an Opt-Out Credit of Twenty Thousand Dollars ($20,000.00) for each Settlement Class member who opts out and files a civil action or charge of Gender Discrimination as set forth in section XV.F.1. and who does not meet any of the three categories set forth in section XV.D.3.

5. At any time prior to twelve and one-half (12 1/2) months after the Approval Date, Class Counsel may notify Home Depot that, for purposes of Opt-out Credits, all Settlement Class members who have timely opted out but who have not already filed a civil action or charge which satisfies the conditions of Section XV.D.3. should be presumed to have filed such a timely civil action or charge of Gender Discrimination. If Class Counsel make this election, Home Depot shall identify separately the Opt-Out Credits attributed to those potential Settlement Class members who thereby are presumed to have filed such a timely civil action or charge of Gender Discrimination. If Class Counsel make this election, Home Depot shall identify separately the Opt-Out Credits attributed to those potential Settlement Class members who thereby are presumed to have filed such a timely civil action or charge of Gender Discrimination (hereinafter a "Presumptive Opt-Out"), and the final determination of the total Opt-Out Credit condition contained in Section XV.D.1. will be deemed satisfied. The total amount of Opt-Out credits due these Presumptive Opt Outs shall be deducted by Home Depot from the Class Monetary Fund allocated under Section XV.A.1. If such Presumptive Opt-Out subsequently files a civil action or charge which satisfies the conditions of Section XV.D.1., then Home Depot may use the Opt-Out

Credit attributed to that Presumptive Opt-Out, along with all other Opt-Out Credits to which Home Depot otherwise is entitled, to defend, settle or pay any judgment related to a civil action or charge, which satisfies the conditions of Section XV.D.3. Any Opt-Out Credits that are not used by Home Depot as set forth above and any Opt-Out Credits that were attributed, at Class Counsel's election, to presumptive Opt-Outs who never filed a civil action or charge which satisfies the conditions of Section XV.D.1. shall be paid to the Beneficiary or Residual Beneficiaries selected in accordance with the provisions of Section XV.F.2.

6. The cumulative total amount of Opt-Out Credits shall not exceed Four Million Dollars ($4,000,000.00), and the total amount of Opt-Out Credits pursuant to Section XV.D.3. shall not exceed Three Million Dollars ($3,000,000.00).

E. Claims Determination Procedure

1. Claims Administrator.

Gilardi & Co., LLC, of San Rafael, California, an experienced class action claims administrator, will be used to assist Class Counsel: (i) in the receipt of objections and opt-out statements; (ii) to prepare and mail notices and claim forms to potential class members as required by this Decree; and (iii) in the claims procedure in accordance with the provisions of this Decree. Class Counsel and the Claims Administrator shall agree on the procedures the Claims Administrator shall employ to discharge its duties under this Decree. All fees for costs and expenses incurred by the Claims Administrator shall be paid by Home Depot.

2. Distribution of Claim Forms.

In additional to mailing claim forms to class members as provided in Section XV.B.1.a. above, the Claims Administrator also shall make claim forms available to any other individual identifying herself as a potential class member who submits a written or oral request for a claim form. The Claims Administrator shall mail the requested claim forms via first class United States Mail, postage prepaid, to individuals requesting them, not later than two (2) business days after the Claims Administrator's receipt of a request therefor. When requesting a claim form, the class member shall indicate and the Claims Administrator shall determine whether the class member is requesting a claim form to make a claim as an Employee Class Member or

Rejected Applicant Class Member. In the event that Class Counsel, Home Depot or it counsel receive a written or oral requests for a claim form from a potential Class Member, the Class Member shall be provided the name, address and toll-free 800 number of the Claims Administrator and advised that all requests for claim forms must be directed to the Claim Administrator. The Claims Administrator shall retain copies of all written requests for claim forms and the envelopes in which they were mailed and a record of all oral requests for claim forms in its files until relieved of its duties under this Decree.

3. **Submission of Claim Forms.**

a. Class members who wish to seek recovery of monetary compensation under this Decree must complete a claim form, and the claim form must be filed with the Claims Administrator by mailing the claim form to the Claims Administrator at Gilardi & Co., LLC, P.O. Box 7090, San Rafael, CA 94912-7090. The claim form must be postmarked on or before December 19, 1997 in order to be considered timely. All claim forms must be signed under penalty of perjury to be considered. Failure by any claimant to timely submit a claim form (for any reason whatsoever), shall bar the potential class member from having her claim considered and from receiving a monetary award from the Fund. The Claims Administrator shall establish a toll-free 800 line and be available to respond to requests from class members for assistance in completing and filing claim forms. Home Depot shall be responsible for the costs associated with the establishment and maintenance of the Claims Administrator's 800 number. In addition, Class Counsel shall be available to consult with and provide assistance regarding the claim filing requirements to class members including class members referred to them by the Claims Administrator.

4. **Notice of Receipt of Claim Forms.**

a. Not later than thirty (30) days after the expiration of the claim filing deadline, the Claims Administrator shall cause to be mailed, via first class United States Mail, postage prepaid, to each claimant whose claim form was received on or before the filing deadline, notice that such claim form was received and will be reviewed.

b. Not later than thirty (30) days after the expiration of the claim filing deadline or five (5) days after the Claims Administrator's receipt of a claim form postmarked after the claim filing deadline, whichever is later, the Claims Administrator shall cause to be mailed, via first class United States Mail, postage prepaid, to each claimant whose claim form is postmarked after the filing deadline and is determined to be untimely under the provisions of this Decree, written notice that such claimant's claim form was not timely postmarked, and notice that such claimant may request review in accordance with Section XV.E.9 by the Claims Review Special Master selected by the parties pursuant to Section XI in connection with the Monetary Claims Procedures of this Decree. The Special Master shall not reverse the determination that a claim form was untimely unless the claimant can demonstrate that the determination of untimeliness was erroneous, i.e., that the claimant's claim form was postmarked on or before the claim filing deadline provided for in Section XV.E.3.

c. In the event that the Special Master determines that a claim was, in fact, timely, the claim shall then be reviewed in accordance with the provisions of this Decree to determine whether it is valid and its value.

5. **Processing of Claim Forms, Requests for Further Information From Claimants.**

The Claims Administrator shall process and initially review each claim form to determine if it is complete. If the Claims Administrator determines that a claim form is incomplete the Claims Administrator shall send via first class United States mail, postage prepaid, a written request to the claimant that the claimant complete the claim form or provide supplemental information in support of the claim. The Claims Administrator may consult with Class Counsel regarding its review of claim forms and communications with claimants. A claimant must complete the claim form or provide any requested supplemental information in writing, signed under penalty of perjury, to the Claims Administrator on or before twenty-one (21) days after the date on which the Claims Administrator's request for completion of the claim form or supplemental information was mailed, and the written notice to the claimant shall specify the date by which the completed claim form or supplemental information must be received by the Claims Administrator in order to be considered timely. Any additional information submitted by

a claimant in response to a request by the Claims Administrator shall be deemed to be part of the claimant's claim form. The failure of a claimant to timely respond to the Claims Administrator's request to compete the claim form or for supplemental information may result in the denial of the claim.

Class Counsel shall determine the validity of all timely claims in accordance with the provisions set forth in Sections XV.A.3., XV.A.4. and XV.E.7.

6. **Provision of Information Regarding Claimants by Home Depot.**

Class Counsel on their own or on behalf of the Claims Administrator may request additional information from Home Depot reasonably related to determining whether a claim is valid and the value of or the assignment of points to a claim. Such requests shall be made in writing. Home Depot shall promptly provide the additional information, but in any event no later than twenty-one (21) days after receipt of the request.

7. **Initial Claim Determination Process.**

Class Counsel shall make a preliminary determination as to whether each timely claim is valid and the assignment of points to each valid timely claim. Such determination shall be based upon the claim form submitted, and any other pertinent information presented by the claimant or the Company. In addition, Class Counsel may request additional information from the claimant which Class Counsel believes to be necessary to determine whether a claim is valid. Such requests for additional information shall be made in writing and sent via first class United States Mail, postage prepaid, and shall specify the information the claimant is required to provide. The claimant must provide the requested information in writing or provide a written explanation as to why she cannot provide the requested information, signed under penalty of perjury, to Class Counsel on or before twenty-one (21) days after the date on which Class Counsel's request for additional information was mailed, and the written notice to the claimant for such supplemental information shall specify the date by which the information must be received by Class Counsel in order to be considered timely. Such additional information shall be deemed to be part of the claimant's claim form. The failure of a claimant to timely respond to the request for information may result in the denial of the claim. For purposes of this preliminary determination, a claim of a

Rejected Applicant Class Member shall be "valid" if the claimant meets the criteria set forth in Section XV.A.3.a. A claim of an Employee Class Member shall be "valid" if the claimant meets the criteria set forth in Section XV.A.4.a. Class Counsel shall complete its review and determination of claims and assignment of points not later than 365 days following the expiration of the claim filing deadline set forth in Section XV.E.3.

8. Notification to Claimant of Claim Determination

As they complete their review and determination of claims, Class Counsel shall cause written notice to be mailed to each claimant. Such notice shall advise each claimant whether her claim has been determined to be valid and, if so, the total number of points allocated to her or if her claim has been determined not to be valid, the reason(s) for such determination.

The notice also shall advise the claimant of her right to request review by the Special Master of the claim determination and/or point allocation and that the claimant has twenty-one (21) days from the date of the notice of claim determination within which to request review by the Special Master. Any claimant wishing to seek review of her claim determination or point allocation must do so by returning a written request for review to the Claims Administrator postmarked no later than twenty-one (21) days from the date of the notice of claim determination. Failure to timely file a request for review shall bar a claimant from challenging the claim determination or point allocation or otherwise participating in any monetary award under the Decree on the basis of a claim determined not to be valid.

9. Review of Claim Determinations by the Special Master

a. All requests for review under Section XV.E.8, shall be decided by the Special Master based on the claim form, any supplemental information provided by the claimant and the written request for review form, unless the Special Master requests that the claimant and/or Class Counsel submit supplemental information.

b. The Special Master shall attempt to expeditiously resolve any request for review not later than sixty (60) days after the filing of the challenge or request for review, unless Class Counsel consents that more time is needed and permitted. The Special Master shall issue a written decision on each request for review. Copies of the Special Master's

decisions shall be mailed to the claimant seeking review of her claim determination and to Class Counsel. The Special Master's decisions on requests for review shall be final, binding and non-appealable.

F. Class Monetary Distribution

1. Class Monetary Distribution List.

Not later than thirty (30) days after the later of the deadlines for completion of the claim determination process by the Claims Administrator and Class Counsel or the Special Master, the Claims Administrator shall prepare and submit to the Special Master for review and approval and to Class Counsel and Home Depot for their information a final combined list of: (i) the names of all qualified Employee claimants whose claims have been finally determined to be timely and valid, the number of points allocated to each such claimant, and the total number of points allocated to all such claimants ("Qualified Employee Claimant List"); and (ii) the names of all qualified Rejected Applicant claimants whose claims have been finally determined to be timely and valid, the number of points allocated to each such claimant and the total number of points allocated to all such claimants ("Qualified Rejected Applicant Claimant List"). The Special Master shall issue her approval determination on the two Qualified Claimant Lists within fourteen (14) days of receipt of the Lists from the Claims Administrator. Within five (5) days after the Special Master's approval of the Qualified Claimant Lists, the Claims Administrator, shall calculate the gross amount of each claimant's monetary award based upon the Fund allocation formula set forth in Section XV.A.2.e. and the total points allocated to each claimant and the point allocation formula set forth in Section XV.A.3.b. and XV.A.4.b, and provide to Class Counsel and Home Depot a report including the name, social security number, total point allocation to and amount of the gross monetary award to each claimant on the Qualified Employee Class Member List and the Qualified Rejected Applicant Class Member List. Not later than twenty-one (21) days after the Special Master approves the two Qualified Claimant Lists, or fourteen (14) days after the Final Approval Date, whichever is later, Home Depot shall cause to be mailed via first class United States Mail, postage prepaid, checks in the amounts calculated to each claimant on

the Qualified Claimant Lists approved by the Special Master, less withholdings as determined in accordance with the provisions of Sections XV.A.6. Such checks shall be accompanied by a cover letter that shall explain to the claimant the basis on which the monetary award and deductions were calculated, W-2 or 1099 forms and any other written information the parties may deem to be pertinent or necessary. All checks shall be negotiable for not more than six (6) months from the date of mailing, and each check and accompanying cover letter shall so indicate. The envelope in which each check is mailed shall have on it the Claims Administrator's address as the return address. For each check that is returned to the Claims Administrator as "undeliverable," the Claims Administrator not later than fourteen (14) days after receipt thereof, shall conduct an IRSC or comparable database search, and if such search is unsuccessful in locating the claimant and the gross value of the claimant's individual share exceeds Five Thousand Dollars ($5,000), shall retain the services of a private investigator to search and attempt to locate the claimant and shall cause to be remailed via certified mail, return receipt requested, the check to the claimant at such new address. Payment for the services of a private investigator, if such services become necessary, shall be made out of the balance of that class member's award, provided, however, that such amounts shall not exceed the lesser of ten (10) percent of the net value of the claimant's individual share or $1,000. Such reissued checks shall be issued within six (6) months of the mailing of the initial checks, and negotiable for not more than six (6) months from the date of remailing. All returned checks to claimants for whom no additional address is obtained, or whose check is returned after an additional address has been obtained, shall be held by the Claims Administrator for not more than six (6) months, after which they will be returned to Home Depot. If no claim is made for the checks by the claimants within that time period, the funds shall be considered unclaimed funds and distributed in accordance with Section XV.F.2.b. of this Decree.

2. **Residual Funds.**

a. To the extent any funds remain in the Class Monetary Settlement or Reserve Funds one year after initial distribution of class settlement checks, all remaining funds which are unclaimed shall be deemed Residual Funds and shall be distributed in accordance with subparagraph b, below.

b. Home Depot shall select as a Residual Beneficiary an entity, organization or program which provides aid to or is dedicated to promoting the causes of women in the geographical area of Home Depot's West Coast Division. Prior to distribution of any Residual Funds to any such entity, organization or program, Home Depot shall notify Class Counsel of the identity of such entity, organization or program in order that Class Counsel may determine that the purposes of the entity, organization or program are consistent with the purposes of this Decree.

XVI. ATTORNEYS' FEES, COSTS AND EXPENSES

A. Basis for Award of Fees, Costs and Expenses.

1. The parties have agreed that it is appropriate as part of the settlement underlying this Consent Decree for Home Depot to pay to Class Counsel, on behalf of the Class Representatives and the Settlement Class, reasonable attorneys' fees, litigation expenses, and costs in this case.

1. The Company has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs in the amount of Twenty Million Dollars ($20,000,000) for work performed and costs and expenses incurred through and including the Approval Date. Included in this amount is approximately Two Million Dollars ($2,000,000) for litigation costs and expenses incurred by Class Counsel. This amount fully satisfies any arguable obligation the Company may have to pay attorneys' fees, litigation expenses, and costs for and on behalf of the Plaintiffs, Class Representatives and the Settlement Class for any and all work performed and costs and expenses incurred through and including the Approval Date.

1. The Company also has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs for work required to be performed by Class Counsel after the Approval Date pursuant to this Decree. The Company agrees that Class Counsel shall be paid such attorneys' fees, expenses and costs in the amount of Two Million, Five Hundred Thousand Dollars ($2,500,000), for work performed and costs and expenses incurred after the Approval Date relating to monitoring, administration and implementation, (including, without limitation, for processing of all claim forms under Section XV., evaluating possible compliance

with this Decree, including the retention of experts to assist in such evaluation, and defense of the Decree. Except as provided in Section XVI.A.4., this amount satisfies any arguable obligation the Company may have to pay attorneys' fees, expenses and costs to Class Counsel for any and all work performed and costs and expenses incurred after the Approval Date of the Decree for the monitoring, administration, implementation and defense of the Decree.

1. In addition to the foregoing amounts, Home Depot agrees that in the event Home Depot or any of its officers, managers or supervisors is held in contempt violation of this Decree or to Section X.B., Class Counsel shall be paid their reasonable costs, expenses and attorneys' fees for the enforcement proceedings resulting in the contempt holding, as though Class Representatives then were a prevailing party in Title VII litigation.

1. Nothing herein shall be interpreted to preclude Home Depot from seeking attorneys' fees, expenses and costs, including fees of the Special Master, incurred in litigating enforcement matters according to Title VII law applicable to a prevailing defendant.

B. Payment of Award

1. Within fourteen (14) days following the Approval Date, the Company shall pay to Class Counsel one half (½) of the Twenty Million Dollars ($20,000,000) or Ten Million Dollars ($10,000,000), for litigation-related attorneys' fees, expenses and costs as set forth in Section XVI.A.2. Home Depot shall pay Class Counsel the remaining amount within fourteen (14) days following the Final Approval Date. In the event that Final Approval of the Decree is not attained, Class Counsel shall return to Home Depot the initial payment of Ten Million Dollars ($10,000,000) within 15 days after the non-approval of the Decree becomes final.

1. The attorneys' fees, expenses and costs awarded and agreed to be paid by the Company pursuant to Section XVI.A.3. shall be paid according to the following schedule:

Thirty (30) days after the Approval Date	$800,000
January 15, 1999	$900,000
January 15, 2000	$300,000
January 15, 2001	$200,000
January 15, 2002	$200,000

January 15, 2003 $100,000

If the Decree is terminated prior to January 15, 2003 pursuant to Section VI, Home Depot shall pay to Class Counsel all attorneys' fees listed above that are unpaid as of the date of the Decree is terminated. Such payment shall be made no later than fourteen (14) days after the date the Decree is terminated.

IT IS SO ORDERED, ADJUDGED AND DECREED this 14th day of January 1998 1997.

SUSAN ILLSTON
United States District Judge
Northern District of California

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