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 INC. (erroneously sued as THE HOME DEPOT, INC.)

**UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA**

SHEILA GIANELLI, an individual,

Plaintiff,

v.

THE HOME DEPOT, INC.,

Defendants.

Case No. 2:13-CV-01969-JAM-CKD

**ORDER GRANTING DEFENDANT  
 THE HOME DEPOT, INC.'S  
 MOTION FOR SUMMARY  
 JUDGMENT**

DATE: May 17, 2016  
 TIME: 1:30 P.M.  
 CTRM: 6

Complaint Filed: September 23, 2013  
 Trial Date: Vacated - June 6, 2016

The Honorable John A. Mendez heard Defendant Home Depot U.S.A., Inc.'s (erroneously sued as "The Home Depot, Inc.") ("Home Depot") Motion for Summary Judgment on May 17, 2016 at 1:30 p.m. Michael J. Sexton and Christian J. Keeney appeared on behalf of Home Depot, and Eric A. Woosley appeared on behalf of Plaintiff Sheila Gianelli ("Plaintiff").

For the reasons set forth in the attached transcript of the May 17, 2016 hearing, the Court orders that Home Depot's Motion for Summary Judgment is GRANTED in its entirety and Home Depot is entitled to judgment as a matter of law.

The Court further orders that this action be dismissed on the merits with prejudice.

**IT IS SO ORDERED.**

DATED: 5.27.2016, 2016

  
\_\_\_\_\_  
Honorable John A. Mendez  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA.

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SHEILA GIANELLI, an individual,  
Plaintiff,

Vs.  
THE HOME DEPOT, INC.,  
Defendant.

Case No. 2:13-CV-1969 JAM  
Tuesday, May 17th, 2016  
1:30 p.m.

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BEFORE THE HONORABLE JOHN A. MENDEZ, JUDGE  
RE: MOTION FOR SUMMARY JUDGMENT

---o0o---

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For the Defendant: OGLETRE, DEAKINS, NASH, SMOAK &  
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Reported by: CATHERINE E.F. BODENE, CSR #6926, RPR  
Official Court Reporter USDC, 916-446-6360  
501 I Street, Room 4-200  
Sacramento, California 95814

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 SACRAMENTO, CALIFORNIA, TUESDAY, MAY 17TH, 2016, 1:30 P.M.

2 ---o0o---

3 THE CLERK: Calling Civil 13-1969, Gianelli versus  
4 Home Depot, Inc.

5 Counsel, approach and state your appearance, please.

6 MR. WOOSLEY: Good afternoon, Your Honor. Eric  
7 Woosley on behalf of plaintiff.

8 THE COURT: Good afternoon.

9 MR. KEENEY: Good afternoon, Your Honor. Christian  
10 Keeney, counsel for Home Depot.

11 MR. SEXTON: Also Mike Sexton, counsel for Home  
12 Depot.

13 THE COURT: All right. Feel free to stand or sit  
14 wherever you want. As long as there is a microphone in front  
15 of you, it doesn't matter to me.

16 The defendant has filed a motion for summary judgment, or  
17 in alternative, a partial motion for partial summary judgment.  
18 It has been opposed by the plaintiff, and I reviewed the reply  
19 brief as well, along with all the documentation that was filed  
20 in support and in opposition to this motion.

21 At the outset, Mr. Woosley, your client has conceded the  
22 intentional inflict of emotional distress and negligent  
23 infliction of emotional distress claims, correct?

24 MR. WOOSLEY: Correct, Your Honor.

25 THE COURT: So summary judgment is granted in favor of

1 the defendants on those claims.

2 Then what remains in this case is plaintiff's sex, age, and  
3 sexual orientation discrimination claims; the plaintiff's sex,  
4 age, and sexual orientation harassment claim; and the  
5 plaintiff's sex, age and sexual orientation retaliation claims.

6 I don't have a lot of questions. The briefs and the  
7 supporting papers are excellent. They lay out the case really  
8 well for the court, and I appreciate that in terms of the  
9 paperwork.

10 In terms of some evidentiary issues, Mr. Keeney, on behalf  
11 of Home Depot, filed a -- the plaintiff filed a request for  
12 judicial notice. That was opposed by the defendant.

13 That objection to the request for judicial notice is  
14 granted. That complaint is not a proper document for judicial  
15 notice, other than I can take judicial notice that a complaint  
16 was filed. But other than that, any allegations, anything with  
17 respect to that complaint would not be subject to judicial  
18 notice.

19 There is obviously a dispute. The allegations are denied.  
20 And so the court has not and cannot consider that complaint  
21 that was filed in a different case.

22 There also was a declaration submitted in the opposition on  
23 behalf of Ms. Gianelli, a lengthy declaration. I always find  
24 declarations in summary judgment motions interesting,  
25 particularly when someone has been deposed.

1 But nevertheless, there are a number of evidentiary  
2 objections raised, in fact evidentiary objections to 32  
3 different statements in the declaration.

4 I did look through those. Again, I found each and every  
5 one of the evidentiary objections to be correct. And I would  
6 sustain each of those objections.

7 They are primarily for lack of foundation, assumes facts  
8 not in evidence, improper legal conclusions, lack of personal  
9 knowledge.

10 The problem with declarations as opposed to depositions is,  
11 as we all know, they're written by lawyers, or at least  
12 reviewed and modified by lawyers and then signed by  
13 individuals. That's why they're not as effective, especially  
14 in a summary judgment motion as opposed to depositions. So  
15 those objections were sustained and are sustained.

16 So let's go through the remaining claims, starting with  
17 the discrimination claim.

18 Plaintiff has brought claims alleging sex, age and sexual  
19 orientation discrimination in violation of Title VII.

20 One of the arguments is that plaintiff can't establish a  
21 prima facie case of sex discrimination. Mr. Woosley, in terms  
22 of just focusing on age or sexual orientation discrimination, I  
23 didn't see anything in your opposition that really raised any  
24 argument that you felt that your client had demonstrated a  
25 prima facie case as to age or sexual orientation

1 discrimination.

2 MR. WOOSLEY: That's fair, Your Honor. We focused on  
3 the sex.

4 THE COURT: Okay. So focusing on the sex  
5 discrimination claim, first, again, the defendants argue that  
6 prima facie case hasn't been demonstrated.

7 I should also step back a second. One of the reasons that  
8 this becomes an issue is the McDonnell Douglas test. And one  
9 of the issues that is raised by the motion is that in these  
10 types of cases, a party can survive summary judgment either by  
11 presenting direct evidence of discrimination or by satisfying  
12 the analytical framework that's set out in McDonnell Douglas  
13 versus Green case, a 1973 Supreme Court case discussed in these  
14 papers.

15 Plaintiff has argued that she has direct evidence of  
16 discrimination and therefore does not need to prove the  
17 elements of a prima facie case as would be required under  
18 McDonnell Douglas.

19 Plaintiff has argued that her direct evidence consists of  
20 her termination notice and her statement, which is unsupported,  
21 that Ms. Kring ratified the conduct of both Armstrong and  
22 Huarte, H-u-a-r-t-e, and failed to investigate, document or  
23 follow HR procedures.

24 In fact, the termination notice in this case says nothing,  
25 doesn't contain any language about plaintiff's age or sex, and

1 therefore that cannot be considered by the court as direct  
2 evidence of discrimination. Direct evidence is actually  
3 evidence which, if believed, proves the fact without inference  
4 or presumption.

5 Then the allegation that Ms. Kring ratified the conduct of  
6 Mr. Armstrong and Mr. Huarte is also just based on speculation.  
7 It is also vague. And therefore, plaintiff has no direct  
8 evidence of discrimination.

9 And so in cases where there is no evidence of direct  
10 discrimination, then the McDonnell Douglas burden shifting  
11 framework does apply. So we will focus on that in this motion,  
12 as do the briefs.

13 Under the McDonnell Douglas framework, the plaintiff has an  
14 initial burden to demonstrate a prima facie case of  
15 discrimination. And to establish a prima facie case, generally  
16 the plaintiff must prove evidence that she was a member of a  
17 protected class, that she was qualified for the position she  
18 sought, or was performing competently in the position she held  
19 and she suffered an adverse employment action such as  
20 termination, demotion, or denial of available job, and that  
21 some other circumstance suggests discriminatory motive.

22 If the plaintiff is able to meet this burden, the burden  
23 then shifts to the employer, in this case Home Depot, to  
24 produce evidence that demonstrates that its action was taken  
25 for a legitimate, nondiscriminatory reason.



1           And then finally, if the employer produces evidence of a  
2 legitimate, nondiscriminatory reason for its action, then the  
3 burden shifts back to plaintiff to demonstrate that the alleged  
4 nondiscriminatory reasons are pretextual for the employer's  
5 true discriminatory motive.

6           So that's what we're focusing on.

7           Getting back then to the sex discrimination claim,  
8 Ms. Gianelli has argued that her termination was an adverse  
9 employment action, and that she has demonstrated the existence  
10 of sex discrimination.

11           This is in her opposition brief at page 13.

12           Her evidence includes the following:

13           That the plaintiff was the only female general manager in  
14 her region when she was hired; that she was told that two of  
15 the women at the facility tend to exaggerate things; that some  
16 operation managers refer to their office space as a "man cave";  
17 that a coworker sent an email that said that the office needs a  
18 man's perspective; and that management allegedly blamed  
19 plaintiff, Ms. Gianelli, for that inappropriate email.

20           She received a host of emails late one night, and a  
21 coworker told another woman in the office, again not in front  
22 of Ms. Gianelli: Wow. You look nice. Have a hot date  
23 tonight?

24           The defendant has argued that Ms. Gianelli's attempt to  
25 show a prima facie case is full of unsupported allegations and

1       conclusory assertions and is devoid of actual evidence.

2             In terms of those two arguments, I do find that Home Depot  
3       has the better of the argument on this claim.

4             Plaintiff agrees that to establish a prima facie case --  
5       discrimination case, that she must show through admissible  
6       evidence that she was in a protected class, that she suffered  
7       an adverse employment action, that she suffered the adverse  
8       employment action because of her protected status.

9             The evidence that the court has before it in this motion by  
10       the plaintiff does not, as the court views it in the light most  
11       favorable to plaintiff, it clearly doesn't establish or rise to  
12       the level that is required, that she was fired because of her  
13       sex.

14            At most, at best it could be argued that the plaintiff has  
15       established there might have been some inappropriate comments  
16       made in the workplace, but her evidence fails to demonstrate  
17       objectively that she was fired because of her sex.

18            It is clear that she believes she was fired because of her  
19       sex, but a plaintiff does not create a genuine issue of  
20       material fact by relying solely on her subjective belief that  
21       the challenged employment action was unnecessary or  
22       unwarranted.

23            That's \*\*\* Cromwell versus Electoral Central Credit Union  
24       case, 2006, a Ninth Circuit case.

25            Where the only evidence presented is uncorroborated and

1 self-serving testimony by the plaintiff, this cannot raise a  
2 genuine issue of material fact. That's the Delaney versus  
3 Lynwood Unified School District case, a Central District of  
4 California case from 2009.

5 The court finds that plaintiff's evidence in support of her  
6 case and in opposition to this motion really consists primarily  
7 of that declaration that she submitted. The other declarations  
8 were of little or no help to her. They really are, more or  
9 less, character references, but not really evidence.

10 And so everything is derived from her declaration. Even if  
11 I assume that everything in that declaration is entirely true,  
12 it is still not clear she has met her burden of demonstrating  
13 she was fired because of her sex. And for those reasons the  
14 court does grant summary judgment on the sex discrimination  
15 claim.

16 Let me also add that even if I thought that a prima facie  
17 case had been made out by the plaintiff for discrimination, I  
18 would still find in Home Depot's favor on this issue. Under  
19 that McDonnell Douglas balancing test, the defendant has more  
20 than met its burden that there was a legitimate,  
21 nondiscriminatory reason for Ms. Gianelli's termination.

22 There's a February 2nd, 2010 -- it is referred to as a PIP.  
23 Remind me again what that stands for.

24 MR. KEENEY: Perform Improvement Plan.

25 THE COURT: There is a Performance Improvement Plan.

1 There is a March 24, 2010 performance review, and an October  
2 28th, 2010, corrective action. And then there is a November  
3 23rd, 2010 termination, and this all provides documentary  
4 evidence of plaintiff's alleged poor work performance.

5 This documentary evidence is also supported by the  
6 testimony of Kring and Schoen, S-c-h-o-e-n, in their  
7 depositions.

8 As pointed out by the defendant, termination due to one's  
9 poor performance is not an illegitimate and discriminatory  
10 reason. That's Pottenger versus Potlach, P-o-t-l-a-c-h, Corp,  
11 a Ninth Circuit case from 2003.

12 So even if I found that the plaintiff had met her burden  
13 to demonstrate a prima facie case, I would then still conclude  
14 that the defendant had met its burden to demonstrate that it  
15 had a legitimate nondiscriminatory reason for its decision to  
16 fire plaintiff. And then plaintiff would be required to show  
17 that the legitimate, nondiscriminatory reason for her firing  
18 was, in fact, pretextual.

19 Here again, there is little if no opposition with respect  
20 to that issue. Plaintiff has only offered the following  
21 response with respect to that issue as to why defendant's  
22 reasons might be pretextual.

23 She writes that:

24 Sheila Gianelli received outstanding performance reviews  
25 prior to complaining to Home Depot management of the treatment

1 she and the other female employees were being subjected to.  
2 And Sheila Gianelli began receiving negative reviews after  
3 complaining to Home Depot management of the treatment she and  
4 the other female employees were being subjected to.

5 Plaintiff does not, with respect to this issue, cite any  
6 admissible evidence for those conclusory statements. And they  
7 clearly do not meet the requirement, the standard of  
8 significant and substantial evidence of pretext.

9 So for all of these reasons the court finds that summary  
10 judgment is appropriate on all the discrimination claims.

11 On the harassment claims, there are harassment claims  
12 brought under Title VII and FEHA in this lawsuit. The  
13 plaintiff is required to prove the following:

14 That a hostile work environment, sexual harassment claim,  
15 requires the plaintiff employee to show she was subjected to  
16 sexual advances, conduct or comments that were unwelcome  
17 because of her sex, and sufficiently severe or pervasive to  
18 alter the conditions of her employment and create an abusive  
19 work environment. And in addition, the plaintiff is required  
20 to establish that the offending conduct was imputable to her  
21 employer.

22 Defendant, again, has moved for summary judgment on the  
23 sex, age and sexual orientation harassment claims. Defendant  
24 has argued that plaintiff has not provided any evidence that  
25 she was subject to severe and pervasive harassment on the basis

1 of any protected category, or that the defendant acted  
2 negligently in failing to prevent such alleged harassment.

3 Plaintiff has responded in her opposition that the question  
4 of whether conduct is severe or pervasive enough is going to be  
5 a jury question.

6 Plaintiff has also alleged that the defendant is strictly  
7 liable for her harassment because it was engaged in by its  
8 supervisors.

9 First, plaintiff is incorrect that the question of severity  
10 and pervasiveness can only be determined by a jury. The  
11 California Supreme Court made it clear that this is an issue  
12 that can be resolved on summary judgment if there is a lack or  
13 a meager showing of facts in support of this claim as the court  
14 finds in this case.

15 So it isn't only just a jury question, and it doesn't have  
16 to get to the jury in circumstances similar to this case before  
17 the court today where there is a noticeable lack of evidence to  
18 support the claim.

19 In determining whether the environment is hostile, the  
20 courts do apply a totality of the circumstances test. The  
21 circumstances include the frequency of the discriminatory  
22 conduct, its severity, whether it is physically threatening or  
23 humiliating, or is it really just a mere offensive utterance,  
24 and whether it unreasonably interferes with the employee's work  
25 performance.

1           In addition, not all workplace conduct that may be  
2 described as harassment affects a term condition or privilege  
3 of employment within the meaning of Title VII.

4           In the case before the court, again taking the evidence in  
5 the light most favorable to plaintiff, there's still, the court  
6 finds, insufficient evidence for any trier of fact to conclude  
7 that the alleged misbehavior was sufficiently severe or  
8 pervasive to alter the conditions of Ms. Gianelli's employment  
9 and/or create an abusive work environment.

10           There are a number of factors that are identified in the  
11 1986 Supreme Court case Meritor Savings Bank versus Vinson. In  
12 that case those factors all support the position that  
13 defendants have taken in this case. The alleged sexual  
14 harassment in this case was infrequent, it was not severe, and  
15 it was not threatening or humiliating, and it did not  
16 unreasonably interfere with the plaintiff's work performance.

17           As pointed out by defendant, multiple courts have concluded  
18 that worse behavior than that alleged in this case was not  
19 severe or pervasive enough to create liability. In Zetwick  
20 versus County of Yolo, the court found that defendant's  
21 conduct, which actually consisted in that case of giving hugs  
22 and kisses to his coworkers and subordinates, was boorish or  
23 overbearing, but did not rise to the level of a Title VII or  
24 FEHA violation and was not objectively abusive.

25           Lappin versus Laidlaw Transit Inc., a Northern District of

1 California case, also supports defendant's position, as well as  
2 Mokler, M-o-k-l-e-r, versus County of Orange, a California  
3 Court of Appeals case from 2007.

4 As for plaintiff's age and sexual orientation harassment  
5 claims, again plaintiff has failed to demonstrate severe and  
6 pervasive harassment based on her age or sexual orientation.

7 Again, in fact, plaintiff did not even address these  
8 arguments in her opposition brief, which in effect tells the  
9 court that plaintiff has conceded that there is no merit to  
10 those claims.

11 So for all of those reasons the court does grant summary  
12 judgment in favor of the defendants on the plaintiff's sex, age  
13 and sexual orientation harassment claims.

14 That leaves retaliation.

15 There are retaliation claims in this lawsuit as well. In a  
16 retaliation claim a plaintiff needs to show that she engaged in  
17 a protected activity, that the employer subjected her to an  
18 adverse employment action, and that there is a causal link that  
19 exists between the protected activity and the employer's  
20 action.

21 Once again, an employee establishes a prima facie case,  
22 then the employer is required to offer a legitimate,  
23 nonretaliatory reason for the adverse employment action. If  
24 the employer produces a legitimate reason for the adverse  
25 employment action, then the presumption of retaliation drops



1 out of the picture and the burden shifts back to the employee  
2 to prove intentional retaliation.

3 That's the Yanowitz versus L'Oréal USA case, a California  
4 Supreme Court case from 2005.

5 Defendant seeks summary judgment on these claims on the  
6 basis that plaintiff didn't suffer an adverse employment  
7 action. In the alternative, defendant argues that it did have  
8 a legitimate, nonretaliatory reason for its actions, and  
9 plaintiff has insufficient evidence to show that the reasons  
10 are pretextual.

11 Defendant argues, as with the other claims, that plaintiff  
12 has not established a prima facie case of retaliation, in part  
13 because some of the corrective actions took place before she  
14 actually complained about her alleged discrimination.

15 There is evidence that plaintiff did not complain until  
16 August -- let's see. August 3rd, 2010, was the first time that  
17 plaintiff reported discrimination, and a number of the acts  
18 that are complained of clearly took place before August 3rd,  
19 2010.

20 Other acts took place too long after she complained about  
21 her alleged discrimination and also the undisputed facts show  
22 the person who terminated plaintiff didn't know that she had  
23 ever complained about her alleged discrimination.

24 Plaintiff has raised in her opposition that she was  
25 terminated after she complained about the alleged harassment

1 and that the law does not require the person who terminated her  
2 to know about her previous complaints.

3 Again, the court finds that the defendant has the better of  
4 the arguments on this issue. Plaintiff agrees that to  
5 establish a prima facie case of retaliation she must show a  
6 causal link between the protected activity and the employer's  
7 action.

8 The evidence submitted by plaintiff does not establish a  
9 causal link between her complaints being about sexual  
10 harassment and her firing.

11 Again, it is clear to the court that plaintiff may believe  
12 that she suffered an adverse employment action because she  
13 complained about sexual harassment, but plaintiff has not  
14 created a genuine issue of material fact by relying solely on  
15 her subjective beliefs that the challenged employment action  
16 was unnecessary or unwanted.

17 In Cornwell versus Electra Central Credit Union, a 2006  
18 Ninth Circuit case, the court held that where the only evidence  
19 presented is uncorroborated and self-serving testimony by  
20 plaintiff, this cannot raise a genuine issue of material fact.

21 Delaney versus Lynwood Unified School District also  
22 provides support to the defendant's argument.

23 Plaintiff's evidence, again, in support of these claims is  
24 almost entirely derived from her declaration. And even if I  
25 assumed all of the facts to be true in that declaration, it is

1 still clear plaintiff has not met her burden of demonstrating,  
2 as she is required to do, a causal link between the protected  
3 activity and the employer's action.

4 For these reasons the court finds that summary judgment on  
5 the retaliation claims are appropriate.

6 As with the discrimination claims, even if I thought the  
7 plaintiff had properly set out a prima facie case for  
8 retaliation, Home Depot has still satisfied its burden of  
9 articulating a legitimate nondiscriminatory reason for its  
10 actions.

11 In fact, plaintiff does not contest that defendant met its  
12 burden of demonstrating that it had a legitimate  
13 nondiscriminatory reason for the actions it took. And given  
14 that, the burden would shift to plaintiff to demonstrate a  
15 pretext that the reasons for firing were, in fact, pretextual,  
16 and plaintiff has failed to satisfy that requirement as well.

17 For those reasons the court grants summary judgment in  
18 favor of the defendants on all of the retaliation claims.

19 That would moot the claim for punitive damages since there  
20 are no claims remaining. And in addition, as the defendants  
21 have argued, there are legal reasons as to why punitive damages  
22 would not be available against Home Depot in this case.

23 Punitive damages are available against a corporation only  
24 when a corporate officer, director, or managing agent had  
25 advance knowledge and conscious disregard, authorization,

1 ratification, or act of oppression, fraud or malice. That does  
2 not exist in this case.

3 For those reasons the court grants summary judgment in its  
4 entirety in favor of Home Depot, and any dates that we've set  
5 for pretrial conferences or trial dates are vacated.

6 I'll allow both sides, if you wish, beginning with  
7 Mr. Woosley, to respond to the court's comments and make a  
8 record. But the bottom line, Mr. Woosley, there just isn't  
9 enough there to even get it to a jury, but go ahead.

10 MR. WOOSLEY: Thank you, Your Honor. I would like to  
11 suggest that there is enough to get to the jury.

12 In today's real world nobody says: I'm not hiring you  
13 because you're black. Or: I'm not going to rent to you  
14 because you're Muslim. Or that they're firing you because  
15 you're a woman.

16 The real world today is much more subtle in the  
17 discrimination. We've got Ms. Gianelli here who, undisputed,  
18 was the first female regional general manager for Home Depot.  
19 And on her very first day of employment, they're talking about  
20 the only other two women that work there. And they're talking  
21 in front of her and feel comfortable enough to talk in front of  
22 her saying: You can't trust those people. They exaggerate  
23 things. And those two people are the women.

24 Almost immediately, the men, in response to having a woman  
25 manager there, start referring to their area as the "man cave."

1 By the way, these are things that Ms. Gianelli has personal  
2 knowledge of and can testify to.

3 The email where it says: Listen, with all of the things  
4 going on around here, we need to get a man's perspective.

5 That's an email that Ms. Gianelli saw, read, popped up on a  
6 screen while she's in the HR manager's office.

7 This is enough evidence that a trier of fact could find  
8 that this environment is anti-woman, that this environment does  
9 not treat women the same as they treat men, and I believe that  
10 we have to take the totality of what Ms. Gianelli went through.

11 I agree that there is no smoking gun. Nobody put on her  
12 performance exam: We're writing you up because you're a woman.  
13 That didn't happen. It doesn't hardly happen anymore.  
14 Certainly it's not going to happen at Home Depot.

15 Instead, it is much more subtle. She is written up with  
16 her termination because she confronted one of the people that  
17 she had made a complaint about, Mr. Huarte.

18 She has a perfect performance record and all of a sudden,  
19 just complaints start building up against her, until she's  
20 terminated. She started in 2008, and she is terminated by  
21 2010.

22 The discrimination that she experienced while much spread  
23 out over time and smaller increments, is still discrimination.  
24 And I believe that a jury could look at those facts and come to  
25 the conclusion that she is not being treated the same as the

1 male employees.

2 As far as somebody firing her that didn't know her, well,  
3 the actual testimony of Travis Lawrence was that he consulted  
4 with Eric Schoen, so he consulted with one of the people that  
5 interacted with our client and then terminated her.

6 So to say that this is just some third party, I am minding  
7 my own business, and I decided to fire Ms. Gianelli is not the  
8 case. It is actually one of the people we allege that  
9 Ms. Gianelli interacted with. Consulted with him, is what his  
10 testimony actually said.

11 And on that, as far as these pretextual reasons, what's  
12 noticeable is that there is no investigation files on any of  
13 these. Nobody took these complaints and did some type of  
14 investigation, which is called for in the Home Depot policy,  
15 before they took these adverse employment actions against  
16 Ms. Gianelli. They just happened.

17 We asked for all the records concerning them. There is no  
18 documentation. Nobody interviewed my client ahead of time. In  
19 any of the records for these things, they do not exist, which  
20 that in itself could lead a jury to concludes they are  
21 pretextual.

22 I would ask the court to reconsider letting this matter go  
23 to a jury. I believe that there are at least enough facts.  
24 I'll admit, certainly an argument can be made, the arguments in  
25 summary judgment are perfectly valid arguments in making a

1 closing argument, but I suggest that's where they should be  
2 made and a jury could find in favor of my client.

3 THE COURT: Mr. Sexton.

4 MR. KEENEY: Mr. Keeney, Your Honor.

5 THE COURT: Sorry.

6 MR. KEENEY: I think these are all arguments that were  
7 raised in plaintiff's opposition and were certainly addressed  
8 in our papers, both the moving papers and the reply. I've  
9 heard the court's comments on them today. I don't think we  
10 have anything further to add.

11 THE COURT: Okay. The ruling stands. Summary  
12 judgment is granted. Mr. Keeney, if you want to prepare an  
13 order, you may do so.

14 A lot of times we just have an order prepared that attaches  
15 the transcript and it just says: For the reasons stated in the  
16 transcript, judgment is granted.

17 I'll leave it up to you. Run it by Mr. Woosley for  
18 approval to form. You can get it to me within the next two  
19 weeks.

20 We have a minute order that will be on the docket that  
21 reflects the court's rulings, but if you want something more,  
22 you're more than welcome to submit an order.

23 MR. KEENEY: Thank you, Your Honor.

24 THE COURT: All right. Thank you all.

25 (Off the record at 2:45 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO )

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

IN WITNESS WHEREOF, I subscribe this certificate at Sacramento, California.

/s/ Catherine E.F. Bodene  
CATHERINE E.F. BODENE, CSR NO. 6926  
Official United States District Court Reporter



**CERTIFICATE OF SERVICE**  
*Sheila Gianelli v. Home Depot U.S.A., Inc.*  
Case No. 2:13-CV-01969-JAM-CKD

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Orange in the office of a member of the bar of this court at whose direction the service was made. My business address is 695 Town Center Drive, Suite 1500, Costa Mesa, CA 92626.

On this date, I served the following documents on the below-listed parties:

**[PROPOSED] ORDER GRANTING DEFENDANT THE HOME DEPOT, INC.'S MOTION FOR SUMMARY JUDGMENT**

**(BY CM/ECF SYSTEM)** I caused the above-referenced document(s) to be sent by electronic transmittal to the Clerk's Office using the CM/ECF System for filing which generated a Notice of Electronic Filing to the CM/ECF registrants in this case to the following:

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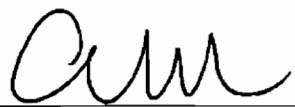
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Attorney (pro hac vice) for Plaintiff  
SHEILA GIANELLI

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on May 25, 2016, at Costa Mesa, California.

Erin Montgomery



\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature