

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOSE R. MATA, SBN 83724
E-Mail: JMata@wagelawyer.com
BAILEY PINNEY, PC
1498 SE Tech Center Place, Suite 290
Vancouver, WA 98683
Telephone: (360)567-2551
Fax: (360)567-3331

Attorneys for Plaintiff Erik Alan Thomas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIK ALAN THOMAS, individually and
on behalf of all others similarly situated
and as a Private Attorney General,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC., a Delaware
Corporation, and DOES 1 through 25,
Inclusive,

Defendants.

Case No. 06-02705 SI

**STIPULATED MOTION AND
[PROPOSED] ORDER TO DISMISS
WITH RIGHT TO REVIVE**

Hon. Susan Illston

NO HEARING SET

IT IS HEREBY STIPULATED BY AND BETWEEN Plaintiff, Eric Alan Thomas, and
Defendant, Home Depot U.S.A., Inc., through their counsel of record, as follows:

1.

Stipulation and Proposed Order –
Case No. 06-02705 SI

1 1) That this action be dismissed without prejudice, subject to the right of Plaintiff to
2 file a statement reviving the case within six months (but not earlier than five months) from the date
3 of the signing of the accompanying proposed order. Plaintiff may file a statement reviving the case
4 only if there is not yet any final approval by the Los Angeles Superior Court of the proposed
5 settlement in the Coordinated Home Depot Employment Cases, Judicial Council Coordination
6 Proceeding No. 4383, or if his claims are not settled by the proposed settlement as approved by the
7 Los Angeles Superior Court.

8
9 2) This action shall be dismissed with prejudice if there is a final approval of the
10 proposed settlement by the Los Angeles Superior Court that settles Plaintiff's claims or if
11 Plaintiff does not file a statement reviving the case within six months from the date of the
12 signing of the accompanying proposed order.

13
14 3) The effect of the dismissal without prejudice, during the period in which
15 plaintiff has a right to revive, shall be the same for all purposes, including the tolling of the
16 statute of limitations for Plaintiff and for putative class members, as if the case had remained
17 stayed during the period in which Plaintiff has a right or revive. If this case is revived, neither party
18 nor any putative class member shall gain any advantage or disadvantage from the dismissal without
19 prejudice. Instead, this case shall be treated as if it had continued to remain stayed and had never
20 been dismissed.

21
22
23 4) This agreement and stipulation of the parties and the proposed order shall have
24 no effect on, and shall not be read to modify in any way, the terms of the global settlement
25 that is being considered by the Los Angeles Superior Court in the Coordinated Home Depot
26 Employment Cases. In the event of any conflict between this stipulation and the settlement
27 agreement, the terms of the settlement agreement shall control;
28

1 5) Neither party is entitled to an award of attorneys' fees or costs or to be regarded as
2 the prevailing party based on the dismissal. Instead, fees and costs are governed by the
3 settlement agreement in the Coordinated Home Depot Employment cases.
4
5
6

7 _____
8 Dated: August 21, 2009

BAILEY PINNEY, PC
JOSE R. MATA

9
10 By: ____/s/

11 Jose R. Mata
12 Attorneys for Plaintiff Erik Thomas

13 Dated: August 21, 2009

LLP

AKIN GUMP STRAUSS HAUER & FELD

14 GREGORY W. KNOPP
15 GARY M. McLAUGHLIN

16
17 By: ____/s/

18 Gary M. McLaughlin
19 Attorneys for Defendant
Home Depot U.S.A., Inc.

ORDER

On the stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) This action is hereby dismissed without prejudice, subject to the right of Plaintiff to file a statement reviving this case within six months (but not earlier than five months) from the date of the signing of this order. Plaintiff may file a statement reviving this case only if there is not yet any final approval by the Los Angeles Superior Court of the proposed settlement in the Coordinated Home Depot Employment Cases or if his claims are not settled by the proposed settlement as approved by the Los Angeles Superior Court.

2) This action shall be dismissed with prejudice if there is a final approval of the proposed settlement by the Los Angeles Superior Court that settles Plaintiff's claims or if Plaintiff does not file a statement reviving the case within six months from the date of the signing of this order.

3) The effect of this dismissal without prejudice, during the period in which plaintiff has a right to revive, shall be the same for all purposes, including the tolling of the statute of limitations for Plaintiff and for putative class members, as if the case had remained stayed during the period in which Plaintiff has a right or revive. If this case is revived, neither party nor any putative class member shall gain any advantage or disadvantage from the dismissal without prejudice. Instead, this case shall be treated as if it had continued to remain stayed and had never been dismissed.

4) The stipulation of the parties and this order shall have no effect on, and shall not be read to modify in any way, the terms of the global settlement that is being

1 considered by the Los Angeles Superior Court in the Coordinated Home Depot
2 Employment Cases. In the event of any conflict between this stipulation and the
3 settlement agreement, the terms of the settlement agreement shall control;

4 5) Neither party is entitled to an award of attorneys' fees or costs or to be
5 regarded as the prevailing party based on this dismissal. Instead, fees and costs are
6 governed by the settlement agreement in the Coordinated Home Depot Employment
7 cases.
8

9
10 Dated: August 21, 2009



Hon. Susan Illston
United States District Court Judge