

Squitieri & Fearon, LLP  
32 East 57th Street, 12th Floor  
New York, New York 10022  
Tel: 212.421.6492  
Fax: 212.421.6553



2600 Kennedy Boulevard, Suite 1K  
Jersey City, New Jersey 07306  
Tel: 201.200.0900  
Fax: 201.200.9008

[www.sfclasslaw.com](http://www.sfclasslaw.com)

**Caitlin Duffy**  
Associate  
[caitlin@sfclasslaw.com](mailto:caitlin@sfclasslaw.com)

July 31, 2012

**VIA ECF**

The Honorable Magistrate Judge Joseph C. Spero  
450 Golden Gate Avenue  
15th Floor  
San Francisco, CA 94102

Re: Smalley et al. v. Home Depot, U.S.A., Inc., No. 11-cv-02951-JCS

Dear Judge Spero:

We represent plaintiffs in the above referenced action. I write with the consent of opposing counsel to update the Court of the status of certain plaintiffs' compliance with the Court's Orders (*see* Doc. No. 66, 67) and to request a Court Order confirming the dismissal of plaintiff Tracey Bertch's claims.

On July 13, 2012 the Court held a hearing on its Order to Show Cause why certain plaintiffs should not be dismissed for failing to comply with their discovery obligations. At that hearing the Court dismissed with prejudice certain plaintiffs for failing to comply with discovery, (*see* Doc. No. 66), and ordered plaintiffs Tracy Bertch and Debora Jackson (whose written discovery responses were incomplete), to serve complete, verified discovery responses by July 27, 2012. (*See* Doc. Nos. 66, 67.) The parties both believe that the Court intended that plaintiffs Bertch and Jackson be dismissed with prejudice if they did not timely comply with their discovery obligations.

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On July 20, plaintiff Jackson completed her verified written discovery responses. However, plaintiff Bertch failed to timely respond to Home Depot's written discovery, and has given no indication that she intends to do so. Because plaintiff Bertch failed to comply with the Court's Order, the parties both believe that her claims are dismissed with prejudice. The parties respectfully request a Court Order dismissing plaintiff Bertch's claims with prejudice.

Respectfully submitted,

/s/ Caitlin Duffy  
Caitlin Duffy

**Cc: By ECF**

Counsel for Home Depot U.S.A., Inc.

Dated: August 2, 2012

