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February 11, 2016

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VIA HAND DELIVERY

Daniel A. Petalas, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

PRE-MUR # 590

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Re: Sua Sponte Submission

Dear Mr. Petalas:

At the request of our client, The Home Depot Inc. Political Action Committee, undersigned counsel is bringing a matter to the attention of the Federal Election Commission pursuant to its Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. 16695 (Apr. 5, 2007).

If the Commission determines that formal proceedings are necessary to resolve this matter, we request that the Commission's alternative dispute resolution process be utilized to do so. Otherwise, we respectfully request that the Commission take no action against The Home Depot Inc. Political Action Committee and dismiss this matter.

Enclosed please find a Sua Sponte Submission summarizing the relevant facts as well as an executed Statement of Designation of Counsel form.

Sincerely,

Jan Witold Baran  
D. Mark Renaud

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## II. Legal Background

Under the Federal Election Campaign Act of 1971, as amended, an employee of a corporation may be solicited for voluntary contributions to the company's separate segregated fund or PAC as a member of the PAC's "restricted class" or "eligible class" if the employee is a stockholder in the company or is considered to be part of the company's "executive or administrative personnel." 52 U.S.C. § 30118(b)(4). An employee is part of the company's "executive or administrative personnel" if he or she is paid a salary (as opposed to a commission or hourly wage) and exercises policymaking, managerial, professional or supervisory responsibilities. *Id.* § 30118(b)(7); 11 C.F.R. § 114.1(c).

## III. Discovery of Payroll Deduction Issues by The Home Depot PAC

At present and at all times discussed in this submission, The Home Depot PAC only solicited and received initial payroll deduction contributions from associates who were eligible to contribute to the PAC. Among other characteristics, the eligible associates were salaried employees exempt from overtime under the Fair Labor Standards Act when they first began payroll deduction for the PAC.

In May 2015, The Home Depot PAC discovered that the PAC inadvertently allowed some associates to continue to contribute to the PAC via payroll deduction after the associates' job classifications had been changed to a nonexempt, non-salaried status. After the job classification changes, these associates were paid on an hourly basis but remained contributors to the PAC via payroll deduction.

## IV. Scope of Review

As a result of this discovery, The Home Depot PAC initiated a broad review of its payroll deduction processes and lists. The Home Depot PAC and its vendor, DDC, analyzed the electronic payroll deduction files, the HR files, and job classifications going back more than 13 years. For associates whose job reclassifications put them in hourly positions, The Home Depot PAC also checked the associates' stock ownership in The Home Depot.

This review was both automated and manual and took several months to complete. There are approximately 12,500 current PAC contributors, and over 25,500 persons have contributed to the PAC in the past.

## V. Findings of the Review

The review by The Home Depot PAC and its vendor confirmed the initial finding of a process error through which payroll deductions were continued for associates whose job reclassifications placed them outside the PAC's solicitable class. The review also confirmed that the initial solicitations and payroll deductions for these associates were permissible. Unlike the payroll deduction files, the solicitation file for new and subsequent periodic solicitations was indeed updated over time to take into account job reclassifications.

After reviewing the job classifications for all current associates and for former associates who contributed to the PAC in the past six years and after checking whether any of the hourly

associates also were stockholders in The Home Depot, The Home Depot PAC made the following findings:

- The number of current associates who had made contributions via payroll deduction to the PAC after they were ineligible to be solicited totaled 215 associates.
  - These contributions aggregated to \$47,803.33 and averaged \$222 per contributor.
  - The largest total amount contributed by one associate under these circumstances was \$2,780.
  - The year 2002 was the earliest year in which a current associate made a contribution to the PAC when ineligible to be solicited for the PAC.
  - Only eleven of these contributors contributed more than \$200 in any single calendar year.
- A review of former associates no longer with the company who made contributions to the PAC after January 1, 2010, identified 29 former associates who had made contributions via payroll deduction after they were ineligible to be solicited for the PAC.
  - These contributions totaled \$4,086.34.
  - Only two of these contributors contributed more than \$200 in any single calendar year.

## **VI. Corrective Action Taken by The Home Depot and The Home Depot PAC**

### **A. Payroll Deductions for Ineligible Associates Stopped**

As soon as it verified an associate's ineligible status, The Home Depot PAC stopped payroll deductions for that associate.

### **B. Contributions by Current Associates Refunded**

By checks dated December 15, 2015 (plus one check dated September 28, 2015), The Home Depot PAC refunded all of the payroll deduction contributions made by current associates after they were ineligible to be solicited for the PAC. The PAC reported these refunds on its January 31, 2016, Year-End FEC report (and the September refund was reported on the October 20, 2015 monthly FEC report).

### **C. Contributions by Former Associates Refunded**

By checks dated December 15, 2015, The Home Depot PAC refunded all of the impermissible payroll deduction contributions made by former associates who had made contributions to the PAC in the past six years but were, at some point, ineligible to be solicited for the PAC when they participated in payroll deduction. The PAC reported these refunds on its January 31, 2016, Year-End FEC report.

D. Internal Controls Have Been Revised

The Home Depot PAC has initiated a new payroll deduction process through which the HR file for PAC-eligible associates will be matched against the PAC payroll deduction file before the date of a payroll deduction. Through this match, the PAC will keep in its payroll deduction file only those associates in positions that permit them to be solicited for the PAC, and the PAC will only deduct contributions from the paychecks of such persons. The PAC will stop payroll deduction immediately for those employees whose job reclassifications put them outside the PAC-eligible class.

**VII. Conclusion**

As this sua sponte submission demonstrates, The Home Depot PAC took immediate action once it learned that its payroll deduction file had not been updated to account for associate job reclassifications. The Home Depot PAC identified all current associates who had made payroll deductions for the PAC when ineligible to be solicited for the PAC and refunded the contributions made after the change in their employment status. The PAC also searched the records of former associates who had made contributions to the PAC in the past six years and similarly refunded all payroll deductions taken when such former associates were ineligible to be solicited for the PAC. Furthermore, The Home Depot PAC changed its internal processes so that this issue will not occur again.

This submission is voluntary, and The Home Depot PAC is prepared to fully cooperate with the Commission to quickly and fairly resolve any outstanding issues in connection with this matter. Given that The Home Depot PAC has stopped all inappropriate payroll deductions, refunded the pertinent contributions by current and former associates, and strengthened the compliance procedures for the PAC and its payroll deductions, The Home Depot requests that the Commission take no action and dismiss this matter. If formal proceedings are required to resolve this matter, The Home Depot PAC requests the Commission's alternative dispute resolution process. *See, e.g.,* Notification to Proliance Surgeons, Inc., Proliance Surgeons PAC and Philip Lloyd, Treasurer, ADR 710 (April 28, 2014) (dismissing matter involving a corporation's inadvertent excessive payroll contributions to its PAC through the alternative dispute resolution process).

Respectfully submitted this 11th day of February, 2016.



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