

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOHN MIZZARO, on behalf of)
himself and all others similarly situated,)

Plaintiff,)

vs.)

Civil Action No.
1:06-cv-1151-ODE

HOME DEPOT, INC., ROBERT L.)
NARDELLI, CAROL B. TOMÉ, KENNETH)
G. LANGONE, BERRY R. COX, JOHN L.)
CLENDENIN and LARRY M. MERCER,)

Defendants.)

DEFENDANTS’ MOTION TO DISMISS

Defendants The Home Depot Inc., Robert L. Nardelli, Carol B. Tomé, Kenneth G. Langone, Berry R. Cox, John L Clendenin, and Larry M. Mercer move this Court under Fed. R. Civ. P. 12(b)(6), Fed. R. Civ. P. 9(b), and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4, 78u-5 (the “Reform Act”) to dismiss with prejudice Plaintiff’s Complaint for failure to state a claim upon which relief may be granted.

Defendants move to dismiss the Complaint on the following grounds:

- (a) Plaintiffs fail to plead fraud with the particularity required by the Reform Act and by Fed. R. Civ. P. 9(b);

- (b) Plaintiffs fail to allege specific facts establishing a strong inference that Defendants acted with scienter as required by the Reform Act.
- (c) The alleged misstatements are immaterial as a matter of law; and
- (d) Plaintiffs have failed to allege facts establishing that the alleged fraud proximately caused their losses.

In further support of their Motion, Defendants' refer the Court to their Memorandum of Law in Support of Defendants' Motion to Dismiss.

WHEREFORE, Defendants respectfully request that this Court enter an Order dismissing with prejudice Plaintiffs' Complaint.

Respectfully submitted this 11th day of October, 2006.

KING & SPALDING LLP

s/ Michael R. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **DEFENDANTS' MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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I hereby certify that I have also mailed by United States Postal Service the document and attachments to the following attorneys:

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This 11th day of October, 2006

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