

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

JOHN O'BANNON, 8830 Walutes Circle,  
Alexandria, VA 22309, SANDRA F. MOORE,  
194 Detour Road, #3, Seabrook, SC 29940,  
RONALD HAMPTON, 1248 Congaree Road,  
Hopkins, SC 29061, on behalf of themselves and  
all others similarly situated; and RONDALL  
MITCHELL, 11543 Hoofbeat Trail, Lusby,  
Calvert County, MD 20657, individually,

Plaintiffs,

v.

FRIEDMAN'S, INC., 4 W. State Street, Savannah,  
GA 31401, Registered agent for service of process  
– The Corporation Trust, Inc., 300 E. Lombard St.,  
Baltimore, MD 21202; FEDERAL INSURANCE  
COMPANY, 15 Mountain View Road, Warren, NJ  
07059, Registered agent for service of process –  
Maryland Insurance Commissioner, 525 St. Paul  
Place, Baltimore, MD 21202; ST. PAUL  
MERCURY INSURANCE COMPANY, 385  
Washington Street, St. Paul, Minnesota 55102,  
Registered agent for service of process – Maryland  
Insurance Commissioner, 525 St. Paul Place,  
Baltimore, MD 21202,

Defendants.

Case No. AW-03-623

**AMENDED CLASS ACTION**  
**COMPLAINT WITH JURY DEMAND**

Plaintiffs John O'Bannon, Sandra F. Moore, and Ronald Hampton ("Representative Plaintiffs") bring this class action on behalf of themselves and all other similarly situated persons against Friedman's, Inc. ("Friedman's" or "the Company") under federal law prohibiting discrimination in employment on the basis of race. Plaintiff Rondall Mitchell brings a related individual claim of unlawful retaliation under federal law by Friedman's for his opposition to the Company's racially discriminatory policies and practices. In addition, Plaintiffs bring this action against Federal Insurance Company and St. Paul Mercury Insurance Company (collectively the "Insurers") to obtain declaratory judgment that the Insurers are contractually liable for, and obligated to indemnify Friedman's on, Plaintiffs' claims for monetary relief on behalf of themselves and a class of similarly situated persons, pursuant to insurance contracts between Friedman's and the Insurers.

This race discrimination in employment class action is brought by one African American applicant for employment, John O'Bannon, and two African American former employees, Sandra Moore and Ronald Hampton. Rondall Mitchell, who is white, brings an individual claim of retaliation for opposing Friedman's racially discriminatory policies and practices while he worked as a manager for Friedman's. Friedman's has engaged, and continues to engage, in a companywide policy, pattern or practice of race discrimination in hiring, promotion, compensation and other terms, conditions and privileges of employment and has maintained a hostile environment for African American employees in violation of 42 U.S.C. § 1981. This action seeks equitable and injunctive relief, including an end to the discriminatory practices described herein, rightful place relief for all class members, and monetary relief including back pay and front pay; compensatory and punitive damages; and reasonable costs and attorneys' fees. This action also seeks to establish the Insurers' liability to pay the judgment for all such monetary relief.

## **I. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343(4), to adjudicate plaintiffs' claims against Friedman's pursuant to 42 U.S.C. § 1981 ("§ 1981").

2. This Court has jurisdiction to adjudicate the claim for declaratory judgment against the Insurers pursuant to 28 U.S.C. §1367(a) and 28 U.S.C. § 2201(a).

## **II. VENUE AND INTRA-DISTRICT ASSIGNMENT**

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and the Standing Order of the United States District Court for the District of Maryland concerning the assignment of civil cases to the Southern Division § (B)(1) and (2). Plaintiffs John O'Bannon and Rondall Mitchell resided in Prince George's and Calvert counties, within the Southern Division, respectively, at the time this action was brought. Many of the discriminatory acts suffered by plaintiffs O'Bannon and Mitchell and class members also have occurred at Friedman's stores in the Southern Division of the District of Maryland.

## **III. PARTIES**

### **A. Plaintiffs**

4. Plaintiff John O'Bannon ("O'Bannon") is an African American citizen who resided in Prince George's County, Maryland. In May 2000, O'Bannon was recruited by an African American manager for a retail sales or entry level management job with Friedman's in Prince George's County, Maryland, but was rejected by Friedman's higher management. On January 19, 2001, O'Bannon filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging that Friedman's discriminated against him and a class of similarly situated African American employees and applicants. A copy of O'Bannon's EEOC Charge is attached to this Complaint as Exhibit 1A. On January 28, 2003, the EEOC found reasonable cause to believe that Friedman's discriminated against O'Bannon and African Americans as a class. A copy of the EEOC's Letter of Determination is attached to this Amended Complaint as Exhibit 1B.

5. Plaintiff Sandra F. Moore ("Moore") is an African American citizen who resides in Beaufort County, South Carolina. Moore worked for Friedman's from January 1995 until July 1997 and again from March 1998 until her termination on or about July 29, 2001. During her time at Friedman's,

Moore was repeatedly turned down for promotional opportunities, was not allowed to hire African American sales staff if it would affect the racial “mix” in her store, and was terminated due to her repeated interest in promotion. A copy of Moore’s EEOC Charge is attached to this Complaint as Exhibit 2A. On March 13, 2003, the EEOC found reasonable cause to believe that Friedman’s discriminated against Moore and African Americans as a class. A copy of the EEOC’s Letter of Determination is attached to this Amended Complaint as Exhibit 2B.

6. Plaintiff Ronald Hampton (“Hampton”) is an African American citizen who resides in Richland County, South Carolina. Hampton worked for Friedman’s from June 1995 until August 2001 as a Store Partner. During his tenure, Friedman’s upper management denied Hampton terms, conditions, and advantages of employment equal to those afforded to his white counterparts, and refused to allow Hampton to hire African Americans if it would affect the racial “mix” in his store. He was terminated for discriminatory reasons. A copy of Hampton’s EEOC Charge is attached to this Complaint as Exhibit 3A. On March 13, 2003, the EEOC found reasonable cause to believe that Friedman’s discriminated against Hampton and African Americans as a class. A copy of the EEOC’s Letter of Determination is attached to this Amended Complaint as Exhibit 3B.

7. Plaintiff Rondall M. Mitchell (“Mitchell”) is a white citizen who resides in Calvert County, Maryland. He worked for Friedman’s from late 1995 to 1996 and again from September 1998 until November 2000. He worked for Friedman’s as a Senior Partner in charge of twelve retail stores in the Maryland area from March 1999 until he was demoted on or about March 16, 2000, and then was constructively discharged in or around November 2000 in retaliation for opposing Friedman’s racially discriminatory policies and practices. On January 19, 2001, Mitchell filed a Charge of Discrimination with the EEOC alleging that Friedman’s discriminated and retaliated against him and a class of similarly situated persons. A copy of Mitchell’s Charge of Discrimination is attached as Exhibit 4A to this Complaint. On February 10, 2003, the EEOC issued its Second Amended Determination, finding reasonable cause to believe that Friedman’s has discriminated against African Americans as a class and

retaliated against Mitchell for opposing those discriminatory policies. A copy of the EEOC's Letter of Determination is attached as Exhibit 4B to this Complaint.

**B. Defendants**

8. Defendant Friedman's is a Delaware Corporation, headquartered in Savannah, Georgia. In 2003, Friedman's was the third largest specialty retailer of fine jewelry in the United States, and had approximately 650 retail stores in twenty-two states, mostly in the Southeast, Midwest and Mid-Atlantic regions, including approximately seventeen stores in Maryland. In 2002, Friedman's had net sales of \$436.1 million, and net income of \$23.2 million. Friedman's has grown consistently over the last decade. It increased its store count from fifty-five stores in fiscal 1992 to 662 stores in 2002 and became the largest specialty jewelry retailer in the twenty-two states in which it operates.

9. Defendant Federal Insurance Company ("Federal") is an insurance company organized under the laws of the State of Indiana and doing business nationally, including in the State of Maryland.

10. Federal provides and sells, among other insurance products, Employment Practices Liability Insurance ("EPLI") to insure employers, such as Friedman's, against liabilities based on claims of employment discrimination by employees or applicants for employment, like plaintiffs. Federal provided and sold such insurance to Friedman's for portions of the period covered by Plaintiffs' claims against Friedman's.

11. Defendant St. Paul Mercury Insurance Company ("St. Paul") is an insurance company organized under the laws of the State of Minnesota and doing business nationally, including in the State of Maryland.

12. St. Paul provides and sells, among other insurance products, excess liability policies over EPLI to insure employers, such as Friedman's, against liability based on claims of employment discrimination by employees or applicants for employment, like plaintiffs, in excess of the policy limits of such EPLI policies. Federal provided and sold such insurance to Friedman's for portions of the period covered by Plaintiffs' claims against Friedman's.

13. Defendant Friedman's entered into a series of EPLI and excess liability insurance policies with Federal and St. Paul Mercury which contractually obligate the Insurers to defend and insure Friedman's against this action by plaintiffs and any judgment or liability resulting therefrom.

#### IV. STATEMENT OF FACTS

##### A. Friedman's Practices of Racial Discrimination Against African Americans as a Class

14. Each of Friedman's stores operates under the direction of a Store Partner. Each Store Partner is assisted by an assistant manager and two to five sales associates and in some stores a collector. At the time of the original Complaint in this action, 61 Senior Partners, each responsible for approximately twelve stores, oversaw the operations of the stores and evaluate the performance of the Store Partner. Previously, within the liability period, Friedman's employed District Partners who supervised Store Partners and were also responsible for approximately four stores including their own. Senior Partners report, and District Partners reported, to Regional Vice Presidents, 12 in number at the time of the original Complaint in this action, each responsible for approximately forty to sixty stores. Regional Vice Presidents reported at the same time to three Division Vice Presidents, each of whom was responsible for approximately 200 to 225 stores. Due to reductions in the number of stores and the scope of Friedman's operations after the filing of this action, the numbers of stores, Senior Partners, District Partners, and/or Vice Presidents may have decreased. The Division Vice Presidents are based in the Company's home office in Savannah, Georgia and report to the Senior Vice President of Store Operations. Senior Partners, Regional Vice Presidents and Division Vice Presidents interact on a daily basis with senior management and review individual store performance and operations.

15. Friedman's racially discriminatory policies and patterns or practices emanate from the upper echelons of Friedman's management. Friedman's management employed an explicit quota policy limiting the number of African Americans hired in the sales associate and entry-level management positions. Hiring at the store level below Store Partner must be approved by Senior Partners and often by Regional Vice Presidents as well. Senior Partners and Regional Vice Presidents routinely direct

Store Partners to make sure that there are not too many African Americans working at any one store. Given the close working relationship between Senior Partners, Regional Vice Presidents, Division Vice Presidents and the most senior managers who interact on a daily basis, the racially discriminatory directives given to Store Managers are, on information and belief, known to and ratified by Friedman's senior management.

16. Friedman's discriminatory policy has been graphically articulated by Jack Steele, former Division President for Friedman's Mid-Atlantic Division. For instance, on a visit to the Bowie, Maryland store, Steele told Mitchell the store was a disgrace because it was staffed by three black women. Steele also told Mitchell that a banner which hung over the entrance "looks like it was hung by a goddamned nigger." Plaintiff Mitchell also recorded some of Steele's crude and racially biased language on an audiotape, during the regular course of his job at Friedman's and with Steele's knowledge. Because Steele knew he was being taped, he was much more temperate in expressing his racial attitudes than he typically was "off-the-record." Nonetheless, Steele stated on tape:

Largo [Maryland store] is a piece of shit. We got to get a staff in there and get rid of all those, get rid of half the black people in there and just transfer their ass. It's not that I'm mad about, not the black people. ... It is that the standard set there it's just like hiring 18 year olds. I don't want the god damn 18 year olds hired and you go turn right around and hire 18 years olds as if I'll slide this one by on him. It ain't gonna slide by. I don't know what the fuck has happened.

\* \* \* \*

We don't have any bench. We got this yoyo guy that can't even speak fucking English in Owings Mill [Maryland store]. He can't even go to lunch with all of you. Does he have the ability to do it? I don't know if he has the ability. Does he have the talent to do it? I don't know. What are we going to do with him? We got this, this Shondra or whatever her name is, this little pregnant black chick. She can't even smile and hold a fucking conversation. We hired her from the Pizza Hut. We can do better than that Ron. You've got to raise your standards. And if that's the only kind of people you can communicate with then I got a hell of a problem. Now I don't believe that's the only kind of people you can communicate with. But why is it it's the only thing we attract? Look at that girl, this, this Valerie or Val or whatever she was. Squirrely hair, whatever you call that mess, real professional looking in a jewelry store. And then the other black girl comes in and she, she looks like Miss Piggy. Shit!

Steele did not limit his racist instructions to Mitchell, but told various other Store Partners not to hire too many African Americans as well.

17. Friedman's racially discriminatory policies were also articulated by other management officials of Friedman's. On information and belief, a current Division President, Don Mertz, referred to black prospective employees as "chocolate chips." Mertz told Mitchell that blacks were to be like "chocolate chips sprinkled throughout the district." Another Division President, Tim Murray, also ordered a Store Partner to hire more whites and fewer blacks in his stores, and told then-Company President Bob Morris that Friedman's had hired "too many blacks" for the Maryland stores. District and Senior Partners in (at least) the States of Florida, Maryland and Virginia also instructed their Store Partners to limit the number of blacks in their stores.

18. Friedman's explicit and pervasive policy and/or pattern or practice of race discrimination in employment has existed continually. The Company has created and maintained a system-wide policy and/or pattern or practice of race-based disparate treatment that limits the employment opportunities of African American employees. In addition, the Company has created and maintained a system-wide policy and/or pattern or practice of wholly subjective decision-making that adversely impacts the employment opportunities of African American employees. The Company's racially biased policies and practices have also created a hostile environment for its African American employees.

19. The Company has pursued a policy and/or pattern or practice of race discrimination on a continuing basis, which has had the intent and effect of denying African Americans equal job opportunities and conditions of employment. Such discriminatory policies and/or patterns or practices include, without limitation:

- a. Explicitly limiting the number of African Americans hired;
- b. Relying upon subjective, discriminatory criteria utilized by a nearly all white managerial workforce in making compensation, hiring and promotional decisions;



c. Failing and refusing to implement and follow a uniform posting procedure to ensure that all employees have equal notice of management and more desirable job openings and promotions, which adversely affects the ability of African American employees to advance. For example, the Company routinely fails to post available management positions or otherwise publicize the availability of promotional opportunities. This prevents African American employees at Friedman's from learning when a promotion or more desirable position becomes available;

d. Failing and refusing to establish a uniform and unbiased process by which all employees can apply and compete equally for promotions and management positions. For example, the Company routinely fills open positions from its pool of current employees, typically using a "tap on the shoulder" system under which the predominately white management workforce makes subjective and race-biased pre-selection decisions regarding promotions and assignments. As a result, many promotions, vacancies or advancement opportunities are unknown to African Americans and are filled by whites;

e. Discouraging and deterring African American employees from applying for promotions and management positions for which they are qualified;

f. Paying African American employees less than similarly-situated white employees. For example, the amount of compensation an employee receives is not determined by any objective criteria or standards, but rather is determined by subjective, arbitrary and capricious decisionmaking by Friedman's nearly all-white management workforce. This subjective system results in African American employees receiving lower compensation than similarly-situated white employees;

g. Maintaining and fostering a reputation for discriminatory conduct that deters African American employees from pursuing hiring and promotional opportunities with Friedman's;

h. Failing and refusing to take reasonable and adequate steps to eliminate the continuing effects of Friedman's past discriminatory policy and/or patterns or practices;

i. Denying African American employees other terms and conditions of employment on the same basis applied to white employees.

j. Maintaining a work environment that is hostile to African American employees.

20. As a result of Friedman's continued policies and pattern or practices of intentional discrimination, African Americans are denied hiring, promotions and compensation on terms equal to those afforded to similarly situated white applicants and employees.

21. Numerous Friedman's employees and applicants, in addition to the plaintiffs herein, have also filed EEOC Charges alleging that Friedman's discriminated against them and similarly situated African Americans as a class, on the basis of their race. Among these Charging Parties are the following, listed with the dates of their Charges and the locations in which they alleged Friedman's discriminated against them on the basis of race.

a.	Willie Johnson	March 15, 2003	Georgia
b.	Kadisha Khadjif	April 17, 2003	North Carolina
c.	Jacqueline Murray	May 28, 2003	Louisiana
d.	Maketha Radden	April 17, 2003	South Carolina

In the case of each of the above-listed Charges, the EEOC, after investigation, determined there was reasonable cause to find discrimination against the Charging Parties listed above and a class of similarly situated African Americans. These cause determinations were issued by the EEOC on July 3, 2003 (Johnson Charge), July 3, 2003 (Khadjif Charge), February 11, 2004, (Murray Charge), and December 2, 2003 (Radden Charge).

**B. Friedman's Acts Of Discrimination Against The Individual Plaintiffs**

**John O'Bannon**

22. Friedman's denied Plaintiff John O'Bannon employment because of his race. In about May 2000, O'Bannon was recruited for a part-time retail sales position at Friedman's by an African American Friedman's store manager, Constance Givens-Jones, whom he met when he made a sales

presentation to her. Givens-Jones interviewed O'Bannon and offered him a part-time sales position in her store making \$7.50 an hour. She advised O'Bannon that his employment was subject to the approval of her District Partner, Don Mertz, and she would arrange an interview for him with Mertz.

23. Mertz interviewed O'Bannon on or around June 9, 2000. During the interview, Mertz reviewed O'Bannon's educational background, professional experiences and personal interests. Mertz questioned O'Bannon at length about his career aspirations and appeared to be particularly interested in O'Bannon's previous sales experience. At the conclusion of the interview, Mertz told O'Bannon he was going to place him in Friedman's Manassas, Virginia retail store as a management trainee with a base pay of \$10 an hour, plus incentives. Mertz told O'Bannon he would schedule a time for O'Bannon to meet the Manassas store manager before his official start date. Mertz also informed O'Bannon that he would have to run the employment offer by his supervisor, Jack Steele.

24. The following week, O'Bannon called Mertz regarding the employment offer. Mertz was vague, evasive and non-committal about hiring O'Bannon. Mertz told O'Bannon he had not spoken with Steele yet. O'Bannon did not hear from Mertz again after several more days, so O'Bannon tried calling Mertz on several occasions, but each time was told that Mertz was not available. Mertz never responded to the phone messages O'Bannon left him.

25. Subsequently, O'Bannon called Givens-Jones who indicated she was shocked to learn Friedman's had not officially hired O'Bannon. Givens-Jones told O'Bannon that Mertz had told her that he was impressed with O'Bannon and was going to assign him to the Manassas store.

26. On information and belief, Friedman's hired less or equally qualified white applicants for the retail sales and entry level management positions after O'Bannon interviewed with and was told by Givens-Jones and Mertz that he would be offered such positions.

**Sandra F. Moore**

27. Plaintiff Moore was hired as temporary, part-time sales help at Friedman's during the Christmas season of 1993 in Hilton Head, South Carolina. In January 1995, Moore began working at

Friedman's full time. Moore voluntarily left Friedman's in July 1997. In March 1998, the district manager offered Moore a raise if she would return to Friedman's, which she did. The last position Moore had at Friedman's was Store Partner. Moore's employment at Friedman's ended on or about July 29, 2001, when her employment was terminated due to her race.

28. As a Friedman's Store Partner, Moore was required to discriminate against African American job applicants. Moore had to tell her Senior Partners including Dennis Slaughter and Stephen Motes (both of whom are white), the race of job applicants so they could decide, based on the applicants' race, if Moore could hire them. Moore was not allowed to hire an African American if it would negatively affect the racial "mix" in the store. The fact that the applicants were approximately 85% black made it difficult to keep the racial mix as Friedman's wanted it.

29. Moore was also discriminatorily denied promotion. During her employment at Friedman's, Moore expressed her interest in promotional opportunities on numerous occasions. Despite her repeated expressions of interest, Friedman's frequently promoted or hired whites into positions for which Moore was equally or more qualified.

30. For example, when she was an Assistant Manager, Ms. Moore was passed over for Store Partner positions that were given to white individuals instead. Yet, Ms. Moore would have to train the white Store Partners who were hired instead of her.

31. Beginning in approximately October 2000, Moore expressed her interest in the position of District Partner, the next step up from Store Partner, to her supervisors. She was continually passed over for promotion to District Partner and white individuals were promoted into the District Partner positions.

32. Prior to seeking a promotion above the store level, Ms. Moore had performed well as a Store Partner for Friedman's and her good performance was recognized by Friedman's. However, after she began seeking a promotion above the store level, Ms. Moore began receiving extra critical scrutiny from her supervisors. That scrutiny was not based on her performance but was in response to her

persistent attempts to obtain what is, at Friedman's, a position from which African Americans are excluded. In addition, Friedman's manipulated the store's numbers so that Ms. Moore's performance would appear to be inadequate. Friedman's asserted that Ms. Moore was terminated for failure to meet the sales quota it set, but that reason was a pretext for discrimination. Moreover, unlike other white Store Partners who did not meet sales quotas, Ms. Moore was not offered a demotion and retraining.

**Ronald Hampton**

33. Plaintiff Hampton was hired as a Store Partner at Friedman's in Columbia, South Carolina in June 1995. At that time, Hampton had twenty-five years experience working in the retail jewelry business. In August 2001, Hampton was discriminatorily discharged by Friedman's.

34. Hampton began working at Friedman's because, as he informed Friedman's Regional Vice President Lisa Logan when she interviewed him, he was interested in promotional opportunities.

35. However, not long after beginning to work at Friedman's, Hampton realized that the individuals in the management positions above the store level were virtually all white and concluded that pursuing his goals of promotion would be fruitless and possibly detrimental to his career.

36. Friedman's subjected Hampton to terms and conditions of employment that were different from and harsher than those it offered to similarly situated white employees. Unlike white Store Partners, decisions that Hampton made in running the store were constantly scrutinized and questioned by District and Regional managers. For example, throughout his tenure at Friedman's, Hampton's District Manager regularly undermined Hampton's proper exercise of his authority to discipline store employees.

37. As a Store Partner, Hampton was prevented from giving equal consideration to African American job applicants. Hampton was responsible for conducting interviews of job applicants, but was required to relate the race of job applicants to District and Regional managers (all of whom were white) before he could obtain their final approval to hire applicants and set their pay rate.

38. After being asked “are they white or black?” by District Manager Billie Welch several times, Hampton asked her what difference it made. Welch responded that Hampton was to “keep the mix right” in his store, which Hampton understood to mean having as few African Americans in the store as possible. Hampton was frequently told to “keep the mix right” over the period of his employment by higher level white managers.

39. Friedman’s constantly undermined Hampton’s authority as Store Partner and harassed him in the performance of his duties. On information and belief, higher level white managers told well qualified applicants they would not want to work for him and would not allow him to hire qualified applicants who were later placed in other Friedman’s stores in his district. Because Friedman’s prevented Hampton from hiring adequate qualified staff, it was harder for him to meet the store’s sales and collections quotas.

40. Hampton was terminated because of his race, rather than the pretextual reason given to him – that he did not make the sales quota for the store.

**Rondall M. Mitchell**

41. Plaintiff Mitchell worked for Friedman’s from late 1995 until 1996 and again from September 1998 until November 2000. Mitchell returned to Friedman’s employ as a Store Partner in part because he was promised that he would be promoted quickly above the level of store manager. In January 1999, Friedman’s promoted Mitchell to the position of Senior Partner in charge of ten Friedman’s stores in the Richmond, Virginia area. Approximately one month later, Friedman’s requested that Mitchell transfer to Maryland as Senior Partner over twelve stores. Mitchell transferred to Maryland on March 1, 1999.

42. As Senior Partner, Mitchell was subjected to Friedman’s explicit policy of limiting the number of African American employees hired in its stores. During the first month of Mitchell’s return to Friedman’s in February 1999, when Mitchell spent extensive time with Steele traveling throughout the Richmond area meeting store managers, Steele, who is white, spoke often of his disapproval of

blacks as store managers and stated that Friedman's had a strict policy of limited the number of black employees in any one store.

43. For example, Steele told Mitchell that the "problem" with hiring black managers is "the first thing they want to do is hire a bunch more like 'em. Then you've got a whole goddamn black store." Steele singled out Friedman's Willow Lawn, Virginia retail store as an example of "what you get when you fill a whole goddamn store with blacks." He called the Willow Lawn store a "fucking disaster," and ordered Mitchell to "find some white people and clean that rat's nest out." Steele also used the "n" word when referring to African American employees and often referred to them as "goddamnblacks," as one word.

44. Subsequently, Steele refused to allow Mitchell to hire several qualified African Americans for Friedman's Glen Allen store in Richmond, Virginia. For example, when Mitchell requested to hire one particularly well-qualified black applicant for a sales position in the Glen Allen store, Steele refused saying "you already have a black in that store, Ron. We're not gonna build another fuckin' Willow Lawn." On another occasion after Mitchell transferred to Maryland, Mitchell discovered a manager of one of Friedman's Maryland stores had been entering fraudulent sales to reach his sales quota. When Mitchell brought this to Steele's attention, Steele commented that "theft is always a problem when you have a bunch of 'goddamnblacks' in your stores."

45. As he had in Virginia, Steele also refused to approve Mitchell's hiring of a number of well qualified black applicants for positions in Friedman's Maryland stores. In fact, by the end of 1999, Steele was rebuking Mitchell regularly for his failure to recruit more white and fewer black employees.

46. Steele's refusal to allow Mitchell to hire the best qualified candidates regardless of race created difficulties for Mitchell with the Store Partners he managed.

47. In July 1999, Mitchell hired a well qualified African American woman, Constance Givens-Jones, to manage Friedman's Largo, Maryland store. Although Mitchell knew Steele would not

approve of him hiring Ms. Givens-Jones because of her race, she was a good fit for the store and there had been no white applicants for the position.

48. Over the next several months, Givens-Jones sent Mitchell numerous well qualified black candidates to fill several vacancies in her understaffed store. Under the compulsion of Steele's discriminatory orders, Mitchell either had to reject those applicants or had to place them in other stores in which there were no black employees. As a result, Givens-Jones' store was consistently understaffed and she had to work unreasonably long hours. When Mitchell attempted to place qualified black employees into the understaffed store, Steele discovered the new hires and accused Mitchell of "building" an all black store.

49. In 1999, Mitchell and Steele met in Mitchell's office to discuss staffing changes Steele wanted to implement in Friedman's Maryland stores. Mitchell recorded the conversation with a micro-cassette tape recorder which was in Steele's plain view. During this meeting, Steele issued the directive regarding the Largo store, which was staffed and managed exclusively by blacks and was consistently one of the top producing Friedman's stores in Maryland, that is quoted in paragraph 11 above.

50. Steele also frequently told Mitchell to fire black employees. However, Steele never articulated a race-neutral justification for the firings. Instead, on information and belief, his directives were based on a stereotype held by Steele that all blacks are lazy or thieves who attract bad credit risks and scare off white customers.

51. During his employment at Friedman's, Mitchell complained about Steele's racist statements to Everett Black, a current Division Vice President, Christine Cregar, another Senior Partner, and to Steele himself. Mitchell also played the above tape recording for Stephen Hunt, Friedman's Credit Manager and Jim Wasley, Division Finance Officer.

52. In February 2000, Mitchell recommended to Steele and Don Mertz, Division Vice President, that they interview an experienced and well-qualified African American named Mohammed Abdur-Rahman, whom he recruited for a manager position in Friedman's White Marsh, Maryland store.



Steele and Mertz never interviewed Mr. Abdur-Rahman and instead placed a less experienced and less qualified white female in the position.

53. On March 16, 2000, Steele and Mertz informed Mitchell his performance was unacceptable because he had failed to recruit the “right kind of people” and he could either quit immediately or accept a two level demotion to Store Partner, with a \$10,000 pay cut. Mitchell accepted the demotion.

54. Mitchell subsequently informed Friedman’s through counsel that he believed his demotion was in retaliation for his refusal to implement Friedman’s racially discriminatory hiring and promotion practices. Thereafter, Friedman’s managers continued to take adverse employment actions against him and otherwise made the terms and conditions of his employment intolerable, including actions deliberately designed to cause Mitchell further financial hardship. Because of Friedman’s continuing unlawful harassment and retaliation against him, Mitchell was forced to leave his employment with Friedman’s in November 2000.

C. **Friedman’s Bankruptcy and Discharge, and the Preservation of Plaintiffs’ Claims Made in the Bankruptcy Proceedings**

55. On January 14, 2004, after this action was originally filed, Friedman’s filed a Petition for Relief under Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of Georgia (the “Bankruptcy Court”). During the pendency of its bankruptcy proceedings, Friedman’s was operated by its own management as a Debtor in possession, under supervision of the Bankruptcy Court, pursuant to the Bankruptcy Code. After extensive proceedings before the Bankruptcy Court, Friedman’s debts, with pertinent exceptions listed below, were discharged and Friedman’s regained control of its own operations pursuant to a Plan of Reorganization confirmed by the Court on December 9, 2005.

56. Plaintiffs, on behalf of themselves and the putative class they represent herein, filed claims against Friedman’s in the Bankruptcy Court. In addition, the four other Charging Parties named in paragraph 21 above and Lillian Bush, a putative class member, also filed such claims. The relief that

Plaintiffs sought in their bankruptcy claims was the same as the relief they sought in their original Complaint in this action, namely, comprehensive declaratory, injunctive, and equitable monetary relief, compensatory and punitive damages, costs and attorneys' fees.

57. On November 7, 2005, prior to Friedman's discharge from the Bankruptcy Court proceedings, the Bankruptcy Court issued an Order granting plaintiffs relief from the automatic stay of litigation applicable in bankruptcy proceedings. That Order specified that:

Relief from the automatic stay imposed by Bankruptcy Code Section 362 is hereby GRANTED to allow the Movants [plaintiffs here] to continue their Proceedings [this action] against the Debtors [Friedman's] ... subject to the following conditions...:

Among the pertinent conditions were the following:

- a. Relief from the stay shall be limited, as to the Debtors, to allowing the Movants ... to liquidate their monetary claims and recover from any applicable insurance coverage, and ... the Movants ... may seek to enforce any monetary award obtained against any asset of the Debtors, or property of the Debtors' estates, other than their applicable insurance coverage; provided however, the Movants shall not be precluded from seeking injunctive relief against the Debtors for conduct occurring on or after the effective date of any plan of reorganization confirmed by the Court. ...
- c. Upon the entry of this Order, the Movants' Proofs of Claim against the Debtors shall be deemed WITHDRAWN.

58. As a result of the Bankruptcy Court's Order of November 7, 2005, plaintiffs are authorized, notwithstanding Friedman's bankruptcy proceedings, the discharge of its debts, and the confirmation of a reorganization plan by the Bankruptcy Court, to (1) seek injunctive relief against Friedman's for ongoing discriminatory employment practices, (2) seek monetary relief against Friedman's which would be liquidated and paid from any applicable insurance coverage, and (3) assert additional claims for monetary and other relief based on claims of discrimination occurring after the bankruptcy proceedings.

59. The insurance coverage provided by the Insurers to Friedman's under the insurance contracts alleged in paragraph 13 above is properly available to, and within the terms of, the Bankruptcy

Court's Order permitting liquidation of and recovery on plaintiffs' individual and class claims for monetary relief in this action. Therefore, the Insurers are real parties in interest to this action, they have a concrete financial stake in its outcome, and their presence as parties defendant is necessary to assure that plaintiffs may obtain monetary relief for discrimination against themselves and the class alleged herein, as provided by law.

**D. The Insurers' Refusal to Accept their Obligations for Friedman's Monetary Liability in this Action**

60. Neither one of the Insurers has been willing to acknowledge or accept its full responsibility and liability, under its insurance contracts with Friedman's, for the liability and potential judgment for monetary relief that Friedman's has incurred to plaintiffs and the class, and that may result in a judgment in this action.

61. Federal has acknowledged and accepted its responsibility and liability only on one of several EPLI contracts it entered into with Friedman's, covering not only this action but a number of other claims that have been made against Friedman's. The amount of coverage available under that single contract is insufficient to pay Friedman's liability, or the monetary relief to which plaintiffs and the class are entitled, in this action. Federal has denied responsibility and liability under other applicable EPLI contracts which would, and are properly required to, provide additional monetary coverage on plaintiffs' claims and Friedman's liability for those claims.

62. St. Paul has refused to acknowledge or accept any responsibility or liability on either of the two excess insurance policies it provided over Friedman's EPLI coverage with Federal. The amount of coverage available under all of the applicable Federal policies would be insufficient to provide full coverage to Friedman's for plaintiffs' individual and class claims, and to provide the full monetary relief to which plaintiffs and the class are entitled. Therefore, the St. Paul excess policies provide necessary monetary coverage on plaintiffs' claims and Friedman's liability for those claims, which St. Paul refuses to make available in this action.

## V. CLASS ACTION ALLEGATIONS

63. Representative Plaintiffs seek class certification of this action under Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3). The class Representative Plaintiffs seek to certify satisfies the numerosity, commonality, typicality and adequacy of representation prerequisites for certification under Fed. R. Civ. P. 23(a). Friedman's has both acted and refused to act on grounds generally applicable to the class, making appropriate final injunctive relief for Representative Plaintiffs and the class as a whole, thus satisfying the requirements of Fed. R. Civ. P. 23(b)(2). Common issues of law and fact predominate over individual issues, making a class action procedure superior to the litigation of hundreds and possibly thousands of individual claims throughout the federal and state judiciary, thereby satisfying the requirements of Fed. R. Civ. P. 23(b)(3).

64. Class Definition. The class consists of past, present, and future African American employees of Friedman's and applicants for employment at Friedman's, who are, have been, or may in the future be adversely affected by the continuing policies and/or patterns and practices of race discrimination that have denied them equal hiring, promotion, advancement, career opportunities, and other terms and conditions of employment. Representative Plaintiffs are members of the class they seek to represent.

65. Numerosity: Fed. R. Civ. P. 23(a)(1). The members of the class are so numerous and geographically dispersed that joinder of all members is impractical. While the precise number of class members is indeterminate at the present time, on information and belief, there are hundreds of current African American employees of Friedman's. There are hundreds or thousands more past and future Friedman's employees and applicants for employment. These present, past and future African American employees and applicants are dispersed throughout at least twenty two states. Joinder of this many geographically dispersed class members is impracticable, thus satisfying the numerosity requirement of Fed. R. Civ. P. 23(a)(1).

66. Commonality: Fed. R. Civ. P. 23(a)(2). This suit poses numerous questions of law and fact that are common to and affect the rights of all members of the class. The answers to these questions

will be determined on the basis of common evidence that is applicable to each class member. Specific examples of factual and legal commonality include, but are not limited to:

67. Common Questions of Fact.

- a. Whether the Company discriminatorily refuses to hire and promote qualified African American employees for retail sales and management positions?
- b. Whether the Company has attempted to maintain, and has maintained, a “racial mix” among its store employees by limiting the number of African Americans hired in the stores and by discharging African American employees at stores perceived to have “too many” African American employees?
- c. Whether the Company has intentionally discriminated against African Americans in selecting individuals for management positions, resulting in an almost exclusively white management workforce?
- d. Whether the Company has totally excluded African American employees from its high level managerial positions?
- e. Whether the Company’s employment selection policies are vague and subjective with few, if any objective criteria?
- f. Whether the employment selection policies used by the Company’s almost exclusively white managers are issued by corporate headquarters and/or applied company-wide?
- g. Whether company-wide statistics evidence the under-representation of African Americans in selection of employees for the Company’s hiring and promotional opportunities?
- h. Whether Plaintiffs’ statistical and anecdotal evidence demonstrate that African Americans are denied compensation and other terms and conditions of work on the same basis as are the Company’s white employees?
- i. Whether the Company has a policy and/or practice of not using job postings and/or of preselecting candidates prior to any formal job announcement?

j. Whether African American employees are excluded from and/or overlooked in the preselection process used to make promotion and advancement decisions?

k. Whether the Company has created a racially hostile work environment for African American employees?

68. These numerous questions of fact common to Representative Plaintiffs and the class satisfy the factual commonality requirement of Rule 23(a)(2).

69. Common Questions of Law. Representative Plaintiffs and the class as a whole raise one overriding common legal question: whether the Company discriminates against African American employees and applicants for employment in its hiring, compensation, promotion, advancement and career development policies and/or patterns and practices based on their race? Numerous common questions of law are subsumed in this key legal issue including, without limitation:

a. Whether the Company has violated § 1981, as alleged herein?

b. Whether the Company has created and/or maintained a hostile environment for African American employees?

c. The significance and legal effect of the Company's failure to use job postings and/or its practice of pre-selecting promotion candidates prior to any formal job announcement or bidding process?

d. The significance and legal effect of the Company's failure to use objective selection criteria and/or to have its selection criteria or job requirements validated regarding their job-relatedness?

e. The significance and legal effect of the Company's reliance on almost exclusively white managers to implement its hiring, promotion, advancement and career development policies and/or patterns and practices in light of their conscious and unconscious consideration of race rather than individual qualifications in their evaluation of African American candidates?

f. The significance and legal effect of the statistical evidence showing under-representation of African Americans in management, supervisory, and higher-level positions and in promotions to such positions?

g. What is the appropriate declaratory and injunctive relief for the class? and

h. Whether the Company is liable for punitive damages?

70. The presence of numerous central questions of law that are common to Representative Plaintiffs and to each class member satisfies Rule 23(a)(2)'s legal commonality requirement.

71. Typicality: Fed. R. Civ. P. 23(a)(3). Representative Plaintiffs' claims are typical of the claims of the class members as a whole. Representative Plaintiffs possess the same interest and suffer the same injury as the class members. The relief Representative Plaintiffs seek will benefit the class. The claims of Representative Plaintiffs and the class arise from similar legal or remedial theories. This shared interest in remedying a shared injury through similar legal and remedial theories satisfies the typicality requirement of Rule 23(a)(3).

72. Adequacy of Representation: Fed. R. Civ. P. 23(a)(4). Representative Plaintiffs and their counsel will fairly and adequately protect the interests of the class. Representative Plaintiffs' interests are coextensive with those of the class. Representative Plaintiffs are able and willing to represent the class fairly and vigorously. Representative Plaintiffs' counsel similarly will represent the class fairly and zealously. Representative Plaintiffs' counsel are qualified, experienced, and able to conduct the litigation and to meet the time and fiscal demands required to litigate an employment discrimination class action of this size and complexity. The combined interest, experience and resources of Representative Plaintiffs and their counsel will enable them to litigate competently the individual and class claims of race-based employment discrimination at issue here, thereby satisfying the adequacy requirement of Rule 23(a)(4).

73. Fed. R. Civ. P. 23(b)(2): The Company has acted or refused to act in a manner generally applicable to the class. As described above, the Company maintains a system-wide policy and/or pattern

or practice of treating African American employees and applicants for employment less favorably than their white counterparts in its hiring, promotion, advancement and career development opportunities. This constitutes intentional class-wide discrimination in violation of § 1981. The Company's nearly all-white supervisory and management personnel use a subjective and race-biased system for selecting employees for hire, promotion, advancement and career development. This system of subjective decision-making has resulted in the Company's disparate treatment of its African American employees including Representative Plaintiffs and the class as a whole. The Company's well-known reputation for discrimination against African Americans also deters African American employees from applying for jobs, seeking promotions, desirable job assignments, management positions, and other terms and conditions of employment. The Company's discriminatory treatment of African American employees has created a hostile environment and has been ongoing. These continuing policies and/or patterns or practices of disparate treatment are common to and typical of the claims of all Plaintiffs and class members and satisfy Rule 23(b)(2)'s requirement that the Company has acted or refused to act in a manner generally applicable to the class.

74. Fed. R. Civ. P. 23(b)(2): The Appropriateness of Injunctive and Declaratory Relief to the Class. Plaintiffs seek declaratory relief that the Company's discriminatory employment practices violate § 1981. Plaintiffs also seek injunctive relief designed to remedy the effect of Friedman's ongoing discriminatory practices, including, but not limited to: a) rightful place relief for the Representative Plaintiffs and other victims of the Company's policy or practice of race discrimination; b) appropriate affirmative relief requiring Friedman's to provide a fair and unbiased system for both informing employees about job opportunities and permitting employees to request and obtain such opportunities, and a system to hire, compensate and promote African Americans in a non-discriminatory manner; and c) provisions for monitoring, reporting, and retention of jurisdiction to ensure equal employment opportunity and that the injunctive relief is properly implemented. Such relief by its nature is applicable



to the class as a whole and satisfies Rule 23(b)(2)'s requirement that injunctive and declaratory relief be appropriate.

75. Fed. R. Civ. P. 23(b)(3) Requirements. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) in this case because, as set forth in more detail above, common questions predominate over those affecting class members individually, and a class action is superior to other available methods of resolving this controversy. The alternative to class treatment is potentially hundreds of individual suits in an equal number of federal and state administrative and judicial fora. Such a multiplicity of actions would defeat the economies of scale inherent in the class action procedure and result in substantial waste of judicial resources. Thus, from the standpoint of public policy, transactional costs and judicial economy, multiple litigation would be manifestly inferior to a class action, thereby satisfying Fed. R. Civ. P. 23(b)(3).

## VI. CLAIMS FOR RELIEF

### A. Declaratory, Injunctive, and Monetary Relief Against Defendant Friedman's (42 U.S.C. § 1981)

76. Plaintiffs incorporate Paragraphs 1 through 70.

77. This claim is brought on behalf of all Plaintiffs and members of the class defined in paragraph 64 above.

78. The foregoing conduct of Friedman's violates the rights of Plaintiffs and members of the class under 42 U.S.C. § 1981.

79. Friedman's has engaged in the discriminatory conduct as alleged herein with malice, fraud, or oppression, and/or in reckless disregard of the rights of Plaintiffs and class members under § 1981. Plaintiffs and class members are thus entitled to recover punitive damages in an amount according to proof.

80. Plaintiffs request relief on behalf of themselves, individually, and the class, as hereinafter provided.

**B. Declaratory Relief Against the Insurers (28 U.S.C. § 2201(a))**

81. Plaintiffs incorporate paragraphs 1 through 75.

82. This claim is brought on behalf of plaintiffs for themselves and on behalf of the class of similarly situated African American employees and applicants for employment of Friedman's, as defined in paragraph 64 above.

83. Pursuant to their contractual obligations to Friedman's and the Order of the Bankruptcy Court entered November 7, 2005, the Insurers are liable for, and required to provide Friedman's coverage on, Friedman's liability for monetary relief as claimed and prayed for in this action. However, the Insurers have refused, and continue to refuse, to acknowledge or accept their contractual liability, and obligation to provide Friedman's coverage for its liability, for plaintiffs' monetary relief claims.

84. There is an actual controversy between plaintiffs and the Insurers, as well as between Friedman's and the Insurers, with respect to the Insurers' obligation to assume liability, and indemnify Friedman's, for plaintiffs' monetary relief claims. Plaintiffs seek a declaratory judgment with respect to their rights on this matter.

**VII. PRAYER FOR RELIEF**

Wherefore, Representative Plaintiffs, on behalf of themselves and the class members whom they seek to represent, and Plaintiff Mitchell, request the following relief:

A. Certification of the case as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of the proposed plaintiff class, and designation of the Representative Plaintiffs as representatives of the class and their counsel of record as Class Counsel;

B. A declaratory judgment that the Insurers are liable on, and required to provide coverage to Friedman's for, and to pay plaintiffs and the class for, the monetary liability of Friedman's to plaintiffs and the class, as prayed for below;

C. A declaratory judgment that Friedman's practices complained of herein are unlawful and in violation of the rights of Plaintiffs and class members secured by 42 U.S.C. § 1981;

D. An injunction against Friedman's and its officers, agents, successors, employees, representatives and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;

E. An order requiring Friedman's to institute and carry out policies, practices and programs that assure equal employment opportunities for African American applicants and employees and that remedy the effect of Friedman's past and present unlawful employment practices;

F. An order restoring or placing Plaintiffs and members of the class they seek to represent in those jobs they would now occupy but for the Company's discriminatory practices, or in lieu of reinstatement or in the event class members cannot be placed immediately in their rightful positions, an order for front pay and benefits;

G. An order directing Friedman's to adjust the wage rates and benefits for Plaintiffs and the class they seek to represent to the level that they would have attained but for Friedman's discriminatory practices;

H. An award of back pay, front pay, and damages for lost compensation and job benefits that the individual Plaintiffs and class members would have received but for Friedman's discriminatory practices, including pre-judgment interest, in an amount to be proved at trial;

I. Compensatory damages for emotional distress, humiliation, embarrassment and anguish, in an amount to be proved at trial, for Plaintiffs and class members;

J. An award of back pay, front pay, and compensatory and punitive damages to Plaintiff Mitchell for the Company's retaliation against him for exercising his rights under § 1981, in an amount to be proved at trial;

K. An award of exemplary and punitive damages commensurate with the Company's ability to pay and sufficient to deter future discriminatory conduct, for Plaintiffs and the class, in an amount to be proved at trial;

- L. Plaintiffs' reasonable attorneys' fees and costs and expenses of suit, including expert witness fees to the extent allowable by law;
- M. Prejudgment and postjudgment interest;
- N. An order that any and all amounts awarded pursuant to paragraphs H, I, J, K, L, or M of this Prayer for Relief shall be paid by the Insurers or out of the proceeds of insurance policies provided by the Insurers to Friedman's, and,
- O. Such other and further relief as the Court may deem just and proper.

### **VIII. JURY DEMAND**

Plaintiffs demand trial by jury in this action for all issues so triable under law.

Dated: March \_\_, 2006

Respectfully submitted,

*/s/*

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