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AT GREENBELT
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

BY

John O'Bannon, et al.,

Plaintiffs,

v.

Friedman's, Inc., et al.,

Defendants.

Case No. AW-03-623

[FINAL ~~PROPOSED~~] CONSENT DECREE

I. INTRODUCTION

A. This is a class action race discrimination lawsuit brought pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). It was originally filed on March 6, 2003, against Friedman's, Inc. (hereinafter "Friedman's") by four plaintiffs – John O'Bannon, Sandra Moore, and Ronald Hampton, individually and as representatives of a class of African American employees, former employees, and rejected applicants of Friedman's (hereinafter "Representative Plaintiffs"), and Rondall Mitchell, a non-member of the class ("Mitchell") (the Representative Plaintiffs and Mitchell are collectively referred to herein as "Plaintiffs"). In their complaint, the Plaintiffs alleged that Friedman's had engaged in unlawful employment practices in violation of 42 U.S.C. § 1981 on a class-wide basis by, among other things, denying African-American employees equal consideration and opportunities for hiring, promotion, and compensation. In addition, particular Plaintiffs stated various individual claims based on alleged denials of hiring, promotion, compensation opportunities, harassment, hostile environment, retaliation, demotion, and discharge.

After initial discovery, the Plaintiffs and Friedman's agreed, in September of 2004, to engage in settlement discussions. Although then remaining apart on the issue of a monetary settlement, the Plaintiffs and Friedman's had essentially reached agreement on the terms of non-

monetary, injunctive relief when, on January 14, 2005, Friedman's filed a petition for reorganization in bankruptcy. This filing automatically stayed the litigation. The four Plaintiffs and five other individual, putative members of the class¹ each filed proofs of claim in the Bankruptcy Court. On November 7, 2005, upon a motion by the Plaintiffs, the Bankruptcy Court lifted the stay of this litigation but, in so doing, limited the Plaintiffs and the five putative class members, any class, and the Equal Employment Opportunity Commission ("EEOC") to the proceeds of applicable EPLI insurance, maintained by Friedman's, for the recovery of any monetary damages to which they might prove entitlement. On December 9, 2005, the Bankruptcy Court approved Friedman's reorganization plan.

On June 28, 2006, the Court granted Plaintiffs' motion to amend their complaint to add the Federal Insurance Company (hereinafter "Federal") and the St. Paul Mercury Insurance Company (hereinafter "St. Paul") as Defendants for the purpose of seeking declaratory judgments as to the insurance coverage available for any liability of Friedman's resulting from this race discrimination action.

On November 3, 2006, Friedman's and the Plaintiffs entered into a Partial Settlement Agreement resolving the terms of all prospective, non-monetary, class injunctive relief without any admission of wrongdoing or liability by Friedman's. Friedman's implemented and has adhered to the terms of this Partial Settlement Agreement. On October 16, 2007, counsel for Plaintiffs, Friedman's and Federal, via mediation, agreed to a full monetary settlement of all individual and class claims in the amount of \$1,150,000 to be funded solely by the one Federal policy which has been providing the costs of Friedman's defense. It was agreed that the

¹ These five included four "Charging Parties" who are also represented by Class Counsel and as to whom the EEOC issued probable cause determinations upon the discrimination charges they filed under Title VII of the Civil Rights Act of 1964.

settlement was to be consummated by a Consent Decree incorporating the earlier Partial Settlement Agreement on injunctive relief and the above-stated monetary settlement.

On January 22, 2008, some of Friedman's creditors filed a petition to declare it bankrupt in the United States Bankruptcy Court in Delaware (Bankruptcy Petition No. 08-10161-CSS). Notice of this bankruptcy petition and the automatic stay resulting thereby was given to the United States District Court in Maryland on February 1, 2008. As the result of this petition and subsequent proceedings in the Bankruptcy Court, the petition has been converted to a Chapter 7 proceeding and Friedman's is in the process of liquidation. Given that circumstance, the non-monetary injunctive relief set forth in the Partial Settlement Agreement, which was to be incorporated in the Consent Decree originally agreed to by the parties, is now rendered moot and no longer able to be effectuated.

On July 8, 2008, the Bankruptcy Court entered an order lifting the stay to permit the parties to submit this Consent Decree to the District Court and to consummate their settlement of this Civil Action upon the terms set forth herein.

B. Friedman's makes no admission of liability by agreeing to the entry of this Consent Decree. Friedman's has denied, and continues to deny, all of the allegations made by the Plaintiffs individually and on behalf of the Class. Friedman's specifically denies that it has engaged in any form of unlawful discriminatory conduct with regard to the Plaintiffs or anyone in the Class. Friedman's consent to certification of the Class defined in **Section IV** of this Decree is for settlement purposes only. Friedman's consent to the certification of the above Class does not constitute an admission by it that a class should or could otherwise have been certified in this case.

C. Throughout the negotiations leading to this Consent Decree, the Plaintiffs, the Class, and Friedman's have at all times been represented by competent counsel experienced in employment discrimination class actions. Both prior to, and after, the first bankruptcy stay, the Plaintiffs and Friedman's have exchanged thousands of documents regarding the claims of the Plaintiffs and the Class in formal discovery and mandatory disclosures. Additional information regarding Friedman's employment practices and Plaintiffs' individual and class claims has been informally exchanged during the negotiations of both the Partial Settlement on injunctive relief and the negotiations leading up to the monetary settlement embodied in this Consent Decree. Computerized personnel information has been produced by Friedman's and analyses thereof exchanged by the Plaintiffs and Friedman's. In-depth discussions regarding the claims and defenses of the Plaintiffs and Friedman's have occurred. As these facts reflect, this Consent Decree has been negotiated at arms length, in good faith, with the assistance of experienced and knowledgeable counsel and an experienced, impartial mediator and with the best interests of the Plaintiffs and Friedman's in mind based on an adequate knowledge of all the factual and legal issues presented by the complaint.

D. Based upon their knowledge of the case and the extensive negotiations which have preceded this Consent Decree, the Plaintiffs, Friedman's and Federal² all are now desirous of implementing a negotiated resolution of all the issues raised in the amended complaint in this Civil Action and of entering into a settlement which is final and binding upon all parties to this Civil Action, in order to avoid the burden, expense, and uncertainty of further litigation. This

² Although St. Paul was not a participant in the mediation leading to this Consent Decree, it is the intent of Friedman's, Plaintiffs and Federal that the release of all claims by Plaintiffs and the Class against Friedman's and Federal shall extend to and encompass any and all claims by Plaintiffs and the Class against St. Paul.

Consent Decree has been jointly negotiated and drafted by counsel for Friedman's and the Plaintiffs, who, along with Federal, consent to the entry of this Consent Decree, as a final and binding settlement of this Civil Action in the belief that this Consent Decree is fair, reasonable, and adequate to resolve this case in its entirety, and that this settlement is in the best interests of the Plaintiffs, the Class, Friedman's and Federal. In reaching this conclusion, all counsel and their respective clients have considered, among other things, the expense, inconvenience, and the continuing demands of burdensome and protracted litigation, the risks inherent therein, and the benefits provided by the terms of this Consent Decree.

The agreement by Friedman's and Federal to enter into this Consent Decree is contingent upon the EEOC's acceptance of the relief provided herein as full and complete resolution and settlement of all charges of individual and class discrimination filed with it by the four Plaintiffs, the four Charging Parties, and any other member of the Class covered by this Consent Decree; the EEOC's agreement to close its files and terminate further action by it as to all such charges; and the EEOC's providing to Friedman's of a letter confirming its agreement to these terms.

E. Pursuant to the Court's Order Granting Preliminary Approval of this Consent Decree and the Proposed Notice to the Class submitted therewith (**Exhibits 6a** and **6b**), Notice of this Consent Decree and of this compromise and settlement has been given to the members of the Class. The Court finds that the Notice satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. This Court has considered the settlement and the terms of this Consent Decree and finds that they are fair, reasonable and just; that the rights of the Plaintiffs, the Class, and such other persons as may be affected thereby are fully protected; that the due process rights of the Class to adequate representation, notice of settlement, the right to request exclusion from the settlement's release of individual claims, and opportunity to be heard on the settlement's

approval have been satisfied; that approval of this Consent Decree is in conformity with the Federal Rules of Civil Procedure, and in particular with Rule 23(e) thereof; and that this Consent Decree is in no way a deprivation of any rights, privileges or terms and conditions of employment of any person.

F. Therefore, upon due consideration of the provisions of this Consent Decree, the procedures followed in negotiating, giving notice, and protecting Class members' rights thereunder, and of all of the record and proceedings in this case, it is hereby **ORDERED, ADJUDGED and DECREED** that this Consent Decree shall be entered as a Judgment of this Court and that the parties shall comply with its terms, and take all actions required by this Consent Decree, as specified below.

II. PURPOSES OF THE CONSENT DECREE

The purposes of this Consent Decree are:

- A. To establish an expedited and fair procedure for implementing relief pursuant to the terms of this Consent Decree and for distributing a monetary settlement to eligible members of the Settlement Class;
- B. To avoid further expensive and protracted litigation; and
- C. To provide finality to the resolution of all claims and defenses asserted in this action.

III. DEFINITIONS

The following terms used in the Consent Decree shall have the following meanings:

"Approval Date" means the date upon which the Court signs this Consent Decree after having conducted a fairness hearing, if required, and determined that it is fair, adequate and reasonable.

“Charging Parties” means Willie Johnson , Khadijah Kashif, Jacqueline Murray, and Maketha Radden (now deceased).

“Civil Action” means this action, O’Bannon, et al. v. Friedman’s, Inc., et al., Civil Action No. AW-03-623 (U.S. District Court for the District of Maryland).

“Class” is used herein interchangeably with Settlement Class and has the same meaning. “Settlement Class” is defined in **Section IV**.

“Class Counsel” means the law firm of Goldstein, Demchak, Baller, Borgen & Dardarian and the Law Office of Thomas A. Warren and the individual attorneys of record for the Plaintiffs in this Civil Action.

“Class Fund” means that portion of the Settlement Fund designated for payments to Plaintiffs and Class members under **Section VII**. below.

“Class Representatives” means John O’Bannon, Sandra Moore and Ronald Hampton.

“Field Organization” means that part of the Friedman’s organization comprised of employees working in the stores as well as those employees who have direct supervisory responsibility for the stores.

“Field Positions” mean the positions of District Manager, Store Manager, Assistant Store Manager, and Sales Associate.

“Final Approval” means the entry of this Consent Decree on the Approval Date and either: (1) the expiration of the time for filing of a direct appeal from the Court’s approval of the Consent Decree without a notice of appeal having been filed, or (2) if a timely direct appeal is filed, the final resolution of that appeal resulting in final judicial approval of the Consent Decree.

“Friedman’s Counsel” means the law firm of Drinker Biddle & Reath.

“Insurers” shall mean the Federal Insurance Company (“Federal”) and the St. Paul Mercury Insurance Company (“St. Paul”).

“Preliminary Approval Date” means the date on which the Court entered an Order preliminarily approving this Consent Decree, pending notice, and giving members of the class an opportunity to opt out of the Settlement Class or submit objections to the Consent Decree, after holding a preliminary fairness hearing, if required.

“Settlement Fund” is defined and described in **Section VII** below, and includes amounts to be made available both for monetary payments to Plaintiffs and Class members, and for payments of attorneys’ fees and costs.

“Settlement Fund Administrator” shall mean Settlement Services, Inc. of Tallahassee, Florida.

“Statement of Claim Form” means the forms that must be submitted by Class members pursuant to **Section VII** below in order to qualify for participation in payments from the Settlement Fund.

IV. CLASS DEFINITION AND CERTIFICATION

A. The Civil Action is certified (solely for the purpose of implementing this Consent Decree and the parties’ settlement embodied in it) pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23 (b)(3). Certification is granted pursuant to Rule 23(b)(2) for purposes of the equitable payment of lost wages to class members, and pursuant to Rule 23(b)(3) for the compensatory damages component of the relief provided in the Consent Decree.

B. The Settlement Class consists of:

1. All African American employees who were employed by Friedman's in any retail store or in the store Field Organization, for any length of time, between March 6, 1999 and December 9, 2005; and
2. All African American applicants who applied for employment at Friedman's in any retail store or in the store Field Organization between March 6, 1999 and December 9, 2005, and who were not hired on such application.

C. The portion of the Settlement Class that is eligible to seek to participate in the compensatory damages component of the monetary relief provided in this Decree, consists of:

1. All African American employees who were employed by Friedman's in any retail store or in the store Field Organization for at least six full consecutive months between March 6, 1999 and December 9, 2005, except those who file a timely request to opt out of and be excluded from the compensatory damages component of the monetary relief provisions of the Consent Decree; and
2. All African American applicants who applied for employment at Friedman's in any retail store or in the store Field Organization between March 6, 1999 and December 9, 2005, and who were not hired, except those who file a timely request to opt out of and be excluded from the compensatory damages component of monetary relief provisions of the Consent Decree.

D. Pursuant to Rule 23(b)(2), all Settlement Class members are bound by the provisions of the lost wages component of the monetary relief provided in this Consent Decree and are deemed to have waived and released any and all claims for such Class relief upon the Final Approval of this Consent Decree.

E. Settlement Class members who have filed a timely request to opt out of the compensatory damages component of the monetary relief provisions of this Consent Decree (as provided for in **Section VII** below) shall not be deemed, pursuant to **Section VI B** below, to release any claims for individual compensatory damages (as distinguished from the lost wages portion of the relief as to which they are bound) and remain subject to the Bankruptcy Court Order of November 7, 2005.

Pursuant to Rule 23(b)(3), Settlement Class Members who do not file a timely request to opt out of the compensatory damages component of the monetary relief provisions of this Consent Decree shall be deemed, pursuant to **Section VI B** below, to release all claims for individual monetary relief whether or not they file a statement of claim form or whether or not they are determined to be eligible to receive a settlement payment pursuant to **Section VII**.

F. This Civil Action and all claims made therein by or on behalf of the Plaintiffs and the Class against each, any, and all of the Defendants (Friedman's, Federal, St. Paul) are settled and shall be dismissed with prejudice upon Final Approval of this Consent Decree.

G. In the event that Final Approval of this Consent Decree is not obtained, the fact that certification of a Settlement Class was sought herein or that Plaintiffs, Friedman's and Federal entered into this Consent Decree shall not be deemed a waiver or assertion of any position or defense by Plaintiffs, Friedman's, or Federal in further proceedings in this case including, but not limited to, the question of the appropriateness of class certification, and this Consent Decree shall not then be admissible in any court regarding the propriety of class certification, in this or any other action.

V. JURISDICTION AND TERM OF DECREE

A. The Court has jurisdiction over the parties and the subject matter of this action. The amended complaint in this action asserts claims that, if proved, would authorize the Court to grant the relief set forth in this Consent Decree. Venue is proper in this Court. The Court shall retain jurisdiction of this Civil Action for the purpose of entering all orders which may be necessary to implement the relief provided by this Consent Decree.

B. This Consent Decree and the Court's jurisdiction of the case shall terminate upon the final distribution of the settlement payments required in **Section VII**.

VI. LIMITATION AND RELEASE OF MONETARY RELIEF CLAIMS

A. Each of the Plaintiffs (the three Class Representatives and Mitchell) and the four Charging Parties represented by Class Counsel (Class Members Willie Johnson, Khadijah Kashif, Jacqueline Murray, and Maketha Radden (now deceased)) who receive individual monetary payments from the Settlement Fund as provided in **Section VII** of this Consent Decree shall be required to sign a form of Release attached hereto as **Exhibit 1** as a condition precedent to receipt of payment. Upon signing the Release and as set forth more fully therein, each such Plaintiff and Charging Party (or estate thereof) shall be deemed to have thereby waived, and released Friedman's and its Insurers from, any and all claims including, but not limited to, any claims for monetary relief of any type and attorneys' fees and costs that they made in this Civil Action, or that they might have asserted or could in the future assert under any cause of action against Friedman's and its Insurers arising out of their employment with Friedman's or the termination thereof and/or their failure to be hired by Friedman's including, but not limited to, any claim under any federal, state or local statute including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of

1866, 42 U.S.C. § 1981. As part of such Release, Plaintiffs and the Charging Parties further agree never to seek employment or re-employment with Friedman's or any company with which it is affiliated.

B. All Class Members who do not opt out of this Civil Action in the manner specified in **Section VII** below shall be deemed to have thereby waived, and released Friedman's and its Insurers from, any and all claims, including, but not limited to, all claims for monetary relief of any type (including attorneys' fees and costs), for alleged race discrimination that were made in this Civil Action, or that they might have asserted or that might have been asserted on their behalf or that they could in the future assert against Friedman's and its Insurers arising out of their employment with Friedman's or the termination thereof and/or their failure to be hired by Friedman's including any race discrimination claim under any federal, state or local statute including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of 1866, 42 U.S.C. § 1981. However, as to Friedman's, the foregoing release and waiver of claims shall not extend to claims based on incidents occurring after the Final Approval Date or to matters which were not and could not have been asserted by or on behalf of the Class Member in the Civil Action. For Class Members who do opt out of this Civil Action, the limitation periods for any claims by them which were neither asserted nor could have been asserted in this Civil Action were not tolled during the pendency of this Civil Action.

C. Failure to obtain an individual Release from any Plaintiff, Charging Party or other Class Member shall, in no respect, undermine the full force and effect of the settlement and dismissal of the claims asserted in this Civil Action.

D. Upon the making of the payment described in **Section VII A** by Federal to the Settlement Fund Administrator, all claims made by the Plaintiffs and Class against Friedman's Insurers including, but not limited to, all claims for the relief set forth in paragraphs 60-62 and 81-84 of the amended complaint in this Civil Action, all claims for monetary or other relief of any type (including attorneys' fees and costs) that were made in this Civil Action, and all claims that Plaintiffs or the Class might have asserted or that might have been asserted on their behalf or could in the future be asserted under any cause of action by them against Friedman's Insurers shall be dismissed with prejudice pursuant to the Stipulation of Dismissal of such claims attached hereto as **Exhibit 2**.

VII. MONETARY RELIEF – PAYMENT, CLAIMS PROCESSING AND DISTRIBUTION OF SETTLEMENT FUND

A. Monetary Payment

Within seven (7) days after Preliminary Approval by the Court of this Consent Decree, but no sooner than December 1, 2008 (and provided that as of such date no Plaintiff or Charging Party has filed a Title VII suit pursuant to the Notice of Right to Sue issued to him or her by the EEOC on August 27, 2008), Federal, on behalf of Friedman's, shall pay the gross sum of one million, one hundred and fifty thousand dollars (\$1,150,000.00) (the "Settlement Fund" or "Fund") into an interest-bearing account established by the Settlement Fund Administrator to be distributed in accordance with the provisions of this Consent Decree. The Settlement Fund Administrator, Settlement Services, Inc., has been selected by Class Counsel. The Settlement Fund account shall accrue interest at the customary rate paid by the commercial bank where the funds are deposited. Until all moneys have been paid out of that account, the accrued interest shall be used to pay the costs for the administration of the Settlement Fund including the distribution of the monetary payments, required tax reporting, and other charges as set forth in

this Section. Class Counsel may direct the Settlement Fund Administrator to pay only the costs of the notice and the administration of the claim and approval process out of the Settlement Fund, and no other costs for any other purposes, until the Final Approval of the Consent Decree. If Final Approval of the Consent Decree is not obtained, the Settlement Fund Administrator shall return the balance of the Settlement Fund, plus accrued interest, and less actual costs of notice and administration incurred, to Federal. The obligation of Federal and Friedman's with respect to this Settlement Fund will be met in full upon receipt by the Settlement Fund Administrator of the above-stated settlement amount. Only withdrawals authorized by this Consent Decree may be made from the account.

The Settlement Fund shall be the sole source of all of the following payments pursuant to this Consent Decree:

- (a) monetary relief for the four Plaintiffs and the four Charging Parties represented by Class Counsel, each of whom shall execute a general release (as to Maketha Radden, Class Counsel will obtain a release from her estate);
- (b) monetary relief for the class;
- (c) all attorneys' fees and costs;
- (d) all costs of notice, administration of the claims process, including any necessary mailing or tracing of addresses; and
- (e) the employee and employer share of any employment taxes (it is anticipated that any monetary relief, consistent with the allegations and facts, will be allocated 85% for compensatory damages and 15% for lost wages).

B. Process For Allocating Monetary Relief and Distributing the Settlement Fund

1. Participation in Settlement

All Class members who wish to seek monetary relief by payment from the Settlement Fund under **Section VII B 3** below must complete and return the appropriate Statement of Claim Form(s) (in the form of **Exhibits 3** and **4** attached to this Consent Decree) to the Settlement Fund Administrator, postmarked on or before the postmark deadline established by the Court in its order preliminarily approving this Consent Decree. Class members whose Claim Forms are not received by the Settlement Fund Administrator postmarked by the filing deadline will not be entitled to receive any monetary relief under this Consent Decree.

2. Determination of Eligible Claimant Status

The Settlement Fund Administrator is the sole determiner of eligibility for Class Member monetary relief under the terms of this Decree. Friedman's will not participate in, seek to influence or object to eligibility determinations. All such determinations by the Settlement Fund Administrator shall be final and non-reviewable.

Definition of an "Eligible Claimant": "Eligible Claimants" are only those Class Members who satisfy ALL of the following criteria in either (a) or (b) below, and the criteria in (c) below:

(a) The Class Member was employed by Friedman's in any of its retail stores in a full-time position at any time between March 6, 1999 and December 9, 2005 for at least six (6) full consecutive months.

(b) The Class Member applied for employment at any of Friedman's retail operations at any time between March 6, 1999 and December 9, 2005 and was not hired.

(c) The Settlement Fund Administrator receives from such Class Member, postmarked by the filing deadline in accordance with the procedures set forth in this Consent Decree, an

appropriate and completed Statement of Claim Form(s) in the form of Exhibits 3 (for employees) or 4 (for applicants) attached to this Consent Decree.

3. Determination of the Amount of Awards

Once the Settlement Fund Administrator has made a determination that a Class Member is eligible for monetary relief, it will make a determination of the amount of each Eligible Claimant's award as follows:

a. Enhanced Awards for Persons Who Were Named Plaintiffs, Filed Charges, or Provided Testimony.

Persons who are entitled to an enhanced monetary award are listed on **Exhibit 5**. Each of these persons has (1) served as a Plaintiff in this Civil Action; (2) filed a charge of race discrimination against Friedman's, Inc. with the EEOC on or before December 9, 2005; or (3) signed a declaration for use by Class Counsel in this Civil Action. The persons in sub-categories (2) and (3) on **Exhibit 5** will be entitled to receive both their enhanced award and any award to which they are entitled pursuant to their claim form; the persons in sub-category (1) shall receive only the amount listed on **Exhibit 5**.

b. Distribution for Eligible Claimants with Post-Hiring Claims

All Eligible Claimants who satisfy the criteria of **Section VII B 2 (a)** shall be entitled to a share of the Employee Settlement Pool. The Employee Settlement Pool shall be \$250,000. Each Eligible Claimant, except Plaintiffs, see subparagraph **3 a** above, shall be entitled to share in the Employee Settlement Pool. Each Eligible Claimant's share of the fund shall be proportional to her/his number of points, awarded as specified in this subsection, as a percentage of the points awarded to all Eligible Claimants sharing in the Employee Settlement Pool. Each individual's point distribution shall be based on the Eligible Claimant's length of employment with

Friedman's. Each full month of full-time employment in any position in any of Friedman's retail stores during the class period shall be counted as one point for these purposes.

c. Treatment of Post-Hiring Points

After the Settlement Fund Administrator assigns points to the claims of each Eligible Claimant, the Settlement Fund Administrator shall total all the points assigned to all claims and divide the Employee Settlement Pool by the total of all points assigned to all claims. The result of this calculation will be the amount payable per point. Each Eligible Claimant's total assigned points shall be multiplied by this amount to determine his/her gross amount of monetary relief. The final calculation of Eligible Claimants' payments from the Employee Settlement Pool shall not be made until after the reversion to that Pool of any amounts not allocated to Eligible Claimants from the Applicant Settlement Pool pursuant to subsection e below.

d. Distribution for Eligible Claimants with Failure to Hire Claims

All Eligible Claimants who claim to have applied for employment by submitting a written application and not been hired by Friedman's for a position in any of the Friedman's retail stores, shall be entitled to a share of an Applicant Settlement Pool. That Pool shall consist of \$100,000 from the Settlement Fund. Each such Eligible Claimant's share shall be based on the total number of points assigned to his/her claim using the following criteria:

<u>Year of Application</u>	<u>Points</u>
1999	3
2000	3
2001	2
2002	2
2003	1
2004	1
2005	1

Eligible Claimants may receive compensation for only one failure to hire claim, even if they applied and were not hired more than once. In the event that an Eligible Claimant has more

than one failure to hire claim, compensation shall be awarded based on the claim that produces the highest number of points.

e. Treatment of Failure to Hire Points.

After the Settlement Fund Administrator assigns points to the claims of each failure to hire Eligible Claimant, the points assigned to all failure to hire claims will be added together and divided into the Applicant Settlement Pool. The result of this calculation will be the amount payable per point to all failure to hire claimants. Each Eligible Claimant's total assigned points shall be multiplied by this amount to determine his/her gross amount of monetary payment.

In no event shall a failure to hire Eligible Claimant recover in excess of \$300 from the Applicant Settlement Pool. In the event that any balance remains in the Applicant Settlement Pool after allocation of amounts for all claims from this Pool, such balance shall revert to the Employee Settlement Pool and be distributed to post-hiring Eligible Claimants, pursuant to **Section VII B 3 c**, above.

f. Effect of Filing Both Types of Claim Forms

Eligible Claimants may receive compensation for either a failure to hire claim or a post-hiring claim, but not both types of claims. In the event that an Eligible Claimant has filed both a post-hiring claim form and a failure to hire claim form, compensation shall be awarded based on the claim form that produces the largest compensation.

4. Information Requests

In the event that the Settlement Fund Administrator requests that any Class Member or claimant provide additional information in order to evaluate any Statement of Claim Form, such Class Member or claimant shall timely respond to the request by the date determined by the Settlement Fund Administrator. Failure to respond timely to a request for additional information

may result in the Class Member being determined not eligible to receive any monetary award, at the Settlement Fund Administrator's sole discretion.

5. Distribution of the Settlement Fund

a. Checks

Within three (3) months after Final Approval or as soon thereafter as practicable, the Settlement Fund Administrator shall determine allocations for each Eligible Claimant. The Settlement Fund Administrator will send by certified mail to each Plaintiff and Charging Party the Release form (**Exhibit 1**) stating the gross amount allocated to each such individual. Upon return of the signed Release by the Plaintiff or Charging Party, the Settlement Fund Administrator shall send the originals of all such signed Releases to Counsel for Friedman's and shall mail a check for the net amount of the Settlement Fund to which the Plaintiff or Charging Party is finally determined to be entitled ("Final Gross Settlement Allocation"). The back of the settlement checks sent to all Eligible Claimants shall have printed upon them, above the line for the endorsement signature, the following release language in conformance with **Section VI B** above: "By signing and cashing this check, I release Friedman's and its Insurers (Federal Insurance Company and St. Paul Mercury Insurance Company) from all claims of race discrimination made on behalf of myself and the Class of which I am a member in O'Bannon et al. v. Friedman's et al., Civil Action No. AW-03-623 (U.S. District Court, Maryland)." The Settlement Fund Administrator shall retain the cashed checks with the endorsed release language and, upon request, will provide a copy of any individual's check to Friedman's, Federal or their respective Counsel at their expense.

b. Allocation

All Eligible Claimants will be mailed a check reflecting the net amount of their entitlement determined as follows: 15% of the individual's Final Gross Settlement Allocation will be considered payment for lost wages subject to withholding for FICA and any other legally required withholdings or deductions, and will be reported on Form W-2; 85% of the individual's Final Gross Settlement Allocation will be considered payment for compensatory damages that is not subject to any withholding or deductions, and will be reported on Form 1099-MISC.

c. Deductions, Withholdings, and Related Filings

Included with the check in the net amount due the Eligible Claimant will be a statement showing the gross (pre-tax) amount of the payment, along with an itemized statement of all deductions made. Flat rate deductions from gross amounts will be made only for federal and state income taxes, the employee's share of social security and medicare tax for that portion of a Final Gross Settlement Allocation that is for wages, and any local income tax that applies. Any employer payroll taxes or employer contributions normally required to be paid by the employer (including, but not limited to, FUTA, SUTA and the employer's share of FICA and Medicare) shall be calculated by the Settlement Fund Administrator and shall also be paid out of the Settlement Fund within the time required by the applicable federal and state regulations. The Settlement Fund Administrator will be responsible for preparing and filing W-2 and 1099 forms for all Eligible Claimants, Plaintiffs, and Charging Parties and will retain copies of same. Upon the completion of the distribution of the Settlement Fund, the Settlement Fund Administrator shall provide to Counsel for Friedman's and Plaintiffs a copy of its spreadsheet showing the amount of the gross payments to each individual, all amounts withheld and remitted to the taxing authorities for employee payroll taxes from such payments, and all employer payroll taxes and contributions paid to the taxing authorities out of the Settlement Fund in connection with the

applicable portion of each individual's payment. This spreadsheet shall be Confidential, shall be subject to the document protective order in this Civil Action, and may be disclosed only to the Parties, appropriate taxing authorities such as the Internal Revenue Service, or pursuant to valid legal process. Each Plaintiff, Charging Party and Eligible Claimant receiving a payment will be solely responsible for determining and paying any tax liability they incur as the result of receiving such payment pursuant to this Consent Decree and Friedman's shall have no responsibility as to any such tax liability.

6. Residual Funds and Administrative Expenses

All costs of the Settlement Fund Administrator, including expenses related to the creation, operation, and closure of the Settlement Fund, including preparation of tax returns, notice, and claims administration, shall be paid out of the Settlement Fund. Any monies remaining in the Settlement Fund at the end of the Term of the Consent Decree, less all applicable administrative costs, shall be paid to Class Counsel for monitoring the implementation of this Consent Decree.

7. Miscellaneous

This Consent Decree contemplates that there will be differences in amounts individually received by Eligible Claimants.

Claim Forms received by the Settlement Fund Administrator will be treated as confidential and not disclosed to Friedman's or any other person or entity, except that the Settlement Fund Administrator is authorized to disclose to Friedman's such information from Statement of Claim Forms as is necessary to perform its duties and responsibilities required by this Consent Decree.

C. Process for Opting Out of Individual Monetary Relief

When the Statement of Claim Form is sent to Class Members, a "Notice of Hearing to Consider and Approve Consent Decree" (**Exhibit 6a**) shall also be mailed to each Class Member. For a Class member to effectively opt out of the compensatory damages component of the individual monetary relief, he/she must give notice of the decision to opt out to the Settlement Fund Administrator postmarked on or before the postmark deadline established by the Court in its order preliminarily approving this Consent Decree. The Settlement Fund Administrator shall advise the Parties and the Court as to the identity of anyone filing a notice of opt out.

If more than twenty (20) percent of the Class Members exercise the right to opt out under this provision, Friedman's shall have the absolute option to declare this entire Consent Decree to be null and void.

VIII. PAYMENT OF ATTORNEYS' FEES AND COSTS TO PLAINTIFFS' AND CLASS COUNSEL

A. Amount of Payment

Class Counsel shall receive the following amounts as attorneys' fees, costs and litigation expenses in the aggregate, in full and final payment of all claims for attorneys' fees, costs and litigation expenses in connection with this Civil Action:

Costs and litigation expenses:	\$ 235,250
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Attorneys' fees:	\$ 286,250
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These amounts shall be awarded to all of the attorneys for Plaintiffs and the Class, and shall be divided among them as they may agree.

B. Method and Timing of Payment

The Settlement Fund Administrator shall disburse these funds to Class Counsel at the same time that checks are sent to the Plaintiffs and Eligible Claimants. At the time of such

disbursements and payments it shall be the sole responsibility of the Settlement Fund Administrator to insure that there are sufficient funds in the Settlement Fund to cover all the administrative, withholding and other amounts chargeable to the Settlement Fund as set forth in **Section VII A**. The Settlement Fund Administrator shall distribute amounts to the respective attorneys for Plaintiffs and the Class as they shall jointly direct in writing.

IX. MISCELLANEOUS PROVISIONS

A. Duty to Defend the Decree.

Class Counsel, Friedman's and Federal agree to use their best efforts to defend this Consent Decree from any legal challenge, whether by appeal or collateral attack.

B. Return or Destruction of Documents.

Upon the consummation of this Consent Decree and the expiration of the appeal period, the Plaintiffs and Class Counsel shall expeditiously return to Counsel for Friedman's all documents (other than those filed with the Court or otherwise matters of public record), including any computerized materials, that they received from Friedman's during the course of discovery or settlement negotiations in this case. In the alternative, Class Counsel shall gather all such documents and copies thereof, assure that such documents are destroyed, and provide written verification to Counsel for Friedman's of such destruction. The materials to be returned or destroyed under this provision include any documents and computerized materials in the possession of any third party who received such material from Class Counsel.

C. The Parties Are Bound.

The terms of this Consent Decree shall be binding on the Plaintiffs, four Charging Parties, Class members, Friedman's, Federal and their respective successors and assigns.

D. Consent Decree Is The Complete Understanding of Parties.

This Consent Decree constitutes the complete understanding among the parties with respect to the matters herein. The only obligations that shall be imposed on any party pursuant to this Consent Decree are those expressly set forth herein. No additional obligations are to be imposed or implied.

E. Interpretation of Consent Decree.

Whenever possible, each provision and term of this Consent Decree shall be interpreted in such a manner as to be valid and enforceable. In the event that after Final Approval, any provision or term of this Consent Decree should be determined unenforceable on collateral review, all other provisions and terms of this Consent Decree and the application of the Consent Decree to all persons and circumstances as provided by the Consent Decree shall remain unaffected to the extent permitted by law. If the application of any provision or term of this Consent Decree to any specific person or circumstance should be determined to be invalid or unenforceable, the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

Dated: February 11th, 2008 *sw*

Alexander Williams Jr.
United States District Judge