

No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, T E X A S
	§	
FRIEDMAN’S, INC.	§	
d/b/a FRIEDMAN’S JEWELERS	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of Defendant, Friedman’s, Inc. d/b/a Friedman’s Jewelers, and for cause of action would respectfully show as follows:

**I. DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.2(b)(3); 190.3(a).

**II. JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (“DTPA”) and TEX. INS. CODE ANN. art. 21.21, § 15(b) upon the grounds that Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by §§ 17.46(a) and (b) of the DTPA and TEX. INS. CODE ANN. art 21.21.

### **III. DEFENDANT**

3. Defendant Friedman's Inc. (Friedman's) is a for profit entity incorporated in Delaware with its principal place of business located in Savannah, Georgia. Friedman's does business and is registered to conduct business in the State of Texas and can be served with process by serving its registered agent, C.T. Corporation, 350 N. Paul Street, Dallas, Texas, 75201.

### **IV. VENUE**

4. Venue of this suit lies in Travis County, Texas for the following reasons:
- (a) Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Travis County, Texas;
  - (b) Under the DTPA §17.47(b), venue is proper because Defendant has done business in Travis County, Texas; and
  - (c) Under TEX. INS. CODE ANN. art. 21.21, §15(b) which grants venue in Travis County.

### **V. PUBLIC INTEREST**

5. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below. Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes that these proceedings are in the public interest. Plaintiff, the State of Texas, brings this action pursuant to TEX. INS. CODE ANN. art. 21.21 §15 and TEX. BUS. &

COM. ANN. §17.47 and seeks, *inter alia*, injunctive relief against Defendant to restrain the use of such unlawful practices. Plaintiff informed Defendant of the alleged unlawful conduct alleged herein at least seven days prior to instituting this action.

## **VI. TRADE AND COMMERCE**

6. Defendant has been engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA and also has been engaged in conduct which constitutes the business of insurance as defined by TEX. INS. CODE ANN. art. 21.21 (“Art. 21.21”).

## **VII. ACTS OF AGENTS**

7. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- (a) Defendant performed or participated in the act; or
  - (b) Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

## **VIII. STATEMENT OF FACTS**

8. Defendant is a publicly traded corporation which does business under the assumed name “Friedman’s Jewelers” and operates the third largest jewelry chain in the United States consisting of approximately 650 retail jewelry stores located in 22 southeastern and mid-western states. Sixty five of Defendant’s stores are located in Texas.

9. Defendant advertises its products and services via the Internet ([www.Friedmans.com](http://www.Friedmans.com)), television and magazine ads. It also places flyers on the windshields of cars parked in parking lots in the “power strip centers” where its stores are located, often next to or near large retailers such as Wal-Mart.

10. At its Website, Friedman's states that "Over the years, Friedman's has built its business by earning the trust of millions of customers-one at a time..." and further, states "What our customers trust most is our ability to deliver overall value-quality, service and afford ability all rolled into each and every jewelry purchase." They also represent that "since 1920, the Friedman's name ...has meant value, has meant quality, has meant selection, has meant service and, overwhelmingly, it has meant trust. This superb reputation has opened customers' hearts to Friedman's." They boast that "Friedman's has become the third largest jewelry retailer in the country...not through broad acquisition but through an earned reputation over three generations as a trusted 'neighborhood' jeweler."

11. Friedman's accepts various forms of payment for its jewelry, including major credit cards, cash and checks and heavily promotes Friedman's "Advantage Credit." Friedman's depicts "Advantage Credit" in its advertisements as a credit card but, in fact, the credit available through Defendant is offered pursuant to a retail installment contract. A true and correct copy of the retail installment contract used by Defendant FRIEDMAN'S for its sales in Texas is attached as Exhibit A.

12. In conjunction with its retail jewelry business and its extension of credit to Texas customers, Friedman's also sells property, life and disability insurance on its merchandise.

13. The application for the insurance which Defendant offers to Texas consumers is included in the "Statement of Insurance" section of Defendant's retail installment contract and reads as follows:

## **Application of Buyer**

You are applying for the insurance marked above. Your signature below means that you agree that:

- (a) You are not eligible to enroll for credit life insurance if you have reached your 66<sup>th</sup> birthday.
- (b) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the coverage Effective Date.
- (c) Your co-borrower is not eligible for life nor disability insurance.
- (d) You want to purchase the above checked insurance and you received a copy of the insurance policy.

14. This “Statement of Insurance” is set off in a separate box and includes a specific place for a consumer to accept or decline which of these types of insurance the consumer desires. Within this box there is also a place for the purchasing consumer’s signature reflecting that the consumer agrees to the terms set forth in the “Application of Buyer” provision of the Retail Installment Contract authorizing the purchase of insurance. The “Statement of Insurance” also includes insurance premium amounts charged by Defendant.

15. Defendant’s employees incorporate the insurance premium amounts listed in the “Statement of Insurance” into the total financed amount within the “Itemization of the Amount Financed” section of the Retail Installment Contract.

16. Defendant added charges for insurance to the “Amount Financed” section of consumers’ contracts even when those consumers did not sign the application for insurance indicating that they wished to purchase this insurance from Friedman’s.

17. Defendant also charged many consumers for insurance who signed the application for insurance but who were not aware that they were purchasing credit life, credit disability or property insurance in conjunction with their jewelry purchase.

18. Defendant routinely failed to clearly and conspicuously disclose to its customers that the purchase of credit life, credit disability and/or property insurance was optional when purchasing jewelry.

19. Defendant pressured its employees to sell credit insurance in conjunction with jewelry sales.

20. Defendant's employees represented to some consumers that purchasing credit life, credit disability and/or property insurance was required in conjunction with their jewelry purchase.

21. Defendant collected or attempted to collect these insurance premiums from consumers who did not sign the application for insurance or who were not aware that they were purchasing credit insurance in conjunction with jewelry purchases.

22. Defendant has not clearly and conspicuously disclosed to consumers all material terms and conditions related to the purchase of credit life, credit disability and/or property insurance.

23. Defendant used a form retail installment contract. Defendant's employees, using a software program, entered information regarding the specific terms of each individual retail installment contract, the description and cost of the jewelry purchased, the amount financed and finance charges applicable to each specific consumer's retail installment agreement. Defendant's employees then printed the contract and obtained the purchasing consumer's signature. In many instances, the specific terms, such as the finance charges, were not printed in the appropriate and corresponding space or box for such charges. In those instances, Friedman's failed to disclose material terms of the contract to consumers. In other instances, Friedman's retail installment contract's represented a specific amount as the late fee due on payments when in fact, the late fee charged and collected by Friedman's was higher.

## **IX. VIOLATIONS OF DTPA**

24. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in the preceding paragraphs one through twenty-three of this petition.

25. Defendant, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- (a) Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA;
- (b) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of §17.46(b)(12) of the DTPA; and
- (c) Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

## **X. ARTICLE 21.21 VIOLATIONS**

26. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in the preceding paragraphs one through twenty-three of this petition and further alleges that Defendant has violated Art 21.21 by engaging in one or more of the following acts or practices:

- (a) Engaging in unfair or deceptive acts or practices in the business of insurance, in violation of TEX. INS. CODE ANN. art. 21.21 §3;

- (b) Making, issuing, circulating, or causing to be made, issued or circulated, a statement misrepresenting the terms of a policy issued or to be issued or the benefits or advantages promised thereby, in violation of TEX. INS. CODE Art. 21.21 §4(1); and
- (c) Making, publishing, disseminating, circulating or placing before the public making, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a publication, or in the form of a pamphlet, or in any other way, a statement containing an assertion, representation or statement with respect to the business of insurance which is untrue, deceptive or misleading, in violation of TEX. INS. CODE Art. 21.21 §4(2).

## **XI. PRAYER**

27. By reason of the acts and practices described herein above, Defendant has violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- (a) Adding charges for credit life, credit disability or property insurance to consumer's retail installment contracts without the consumer's written authorization for such charges;

- (b) Adding charges for credit life, credit disability or property insurance to a consumer's retail installment contract without first providing that consumer with a clear and conspicuous disclosure of the terms of the insurance offered and the fact that the purchase of such is optional;
- (c) Collecting, or attempting to collect, premiums from Texas' consumers for credit life, credit disability and property insurance without the consumer's written authorization to purchase such;
- (d) Collecting, or attempting to collect, premiums from Texas' consumers for credit life, credit disability and property insurance without clear and conspicuous disclosure of the terms of this insurance to the consumer prior to the consumer's purchase of such insurance;
- (e) Selling or offering to sell consumers credit life, credit disability and property insurance without clear and conspicuous disclosure of all material terms and conditions of such insurance prior to purchase;
- (f) Representing to consumers that it offers a credit or charge card as part of a revolving credit account when, in fact, it does not; and
- (g) Failing to provide consumers with accurate and material information regarding all material terms and conditions of its retail installment contracts.

29. Plaintiff further requests that upon final hearing this Court render a judgment in favor of the State against the Defendant for the injunctive relief requested herein and award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order each Defendant to pay to the State of Texas:

- (a) Civil penalties of up to \$20,000.00 per violation of the DTPA;
- (b) Civil penalties of up to \$10,000.00 per violation of Art. 21.21;
- (c) Pre-judgment and post-judgment interest on all awards of restitution, damages, and civil penalties, as provided by law; and
- (d) All court costs, costs of investigation, and reasonable attorney's fees pursuant to Tex. Govt. Code Ann. § 402.006(c).

30. Plaintiff further prays that this Court enter Judgment against Defendant:

- (a) Requiring Defendant to disgorge all revenue obtained as a result of its false, misleading and deceptive practices as set forth herein;
- (b) Declaring Friedman's practices described in this petition unlawful; and
- (c) That the Court order that all fines, civil penalties, or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. § 523(a)(7); and Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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