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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANESSA HILL and MARGARET ANDERSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

GRISTEDE'S OPERATING CORP.; RED APPLE GROUP, INC., D/B/A/ GRISTEDE'S; GRISTEDE'S FOOD INC.; GRISTEDE'S DELIVERY SERVICE, INC.; GRISTEDE'S FOODS NY, INC.; GRISTEDE'S NY, LLC; and NAMDOR, INC.;

Defendants.

JUDGE SWAIN
06 CV 10197

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Vanessa Hill ("Hill") and Margaret Anderson ("Anderson") (collectively "Plaintiffs"), by their attorneys Outten and Golden LLP, allege, upon personal knowledge as to themselves and upon information and belief as to other matters, as follows:

NATURE OF THE CASE

1. Defendants Gristede's Operating Corp.; Red Apple Group, d/b/a/ Gristede's; Gristede's Foods, Inc.; Gristede's Delivery Service Inc.; Gristede's Foods NY, Inc.; Gristede's NY, LLC; and Namdor, Inc., (collectively "Defendants" or "Gristede's"), a retail grocery chain of over 50 stores operating in New York City, Westchester County, and Long Island, New York,

under the banner "Gristede's," have systematically discriminated against women on the basis of their gender in job placement, compensation, promotion, and other terms and conditions of employment, in violation of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); the New York State Human Rights Law, New York Executive Law § 296 *et seq.* ("NYSHRL"); and the New York City Human Rights Law, New York City Administrative Code §§ 8-101 *et seq.* ("NYCHRL").

2. The violations are systemic, constituting a pattern or practice of gender discrimination that pervades the corporate culture of Gristede's. They are not isolated or exceptional incidents, but rather the regular and predictable result of Defendants' company-wide policies and practices. Gristede's company-wide policies and practices with regard to placing, promoting, and compensating women have the effect, and have been undertaken with the purpose, of denying equal opportunities in the terms and conditions of employment for female employees.

3. It is Gristede's routine policy or practice to channel women into lower-paying, part-time positions such as cashier and bookkeeper solely on the basis of their gender. Gristede's does this with complete disregard for the qualifications, capabilities, and desires of the women. In fact, women who apply for jobs with Gristede's have been told that the only positions for which they will be considered are cashier and/or bookkeeper.

4. In contrast, Gristede's gives men who apply for employment preferential treatment and places them in higher paying, full-time positions with greater advancement potential.

5. It is Gristede's company-wide policy or practice to promote employees through an *ad hoc* and subjective system that is inherently discriminatory. Store managers and upper management, the overwhelming majority of whom are male, simply "tap on the shoulder" the

employees they want to promote. Almost uniformly, these managers offer these promotions and advancements to males.

6. Gristede's does not post available higher-level positions and does not afford women the opportunity to apply for management or higher-level positions. Even when qualified women express a desire to be promoted to higher-level positions, Gristede's ignores them and instead promotes male employees.

7. Gristede's systematically discriminates against women on a company-wide basis in the following ways:

(a) with respect to job placement;
(b) with respect to compensation;
(c) with respect to promotion;
(d) with respect to training and mentoring;
(e) with respect to discipline;
(f) with respect to other terms and conditions of employment;
(g) by failing to implement effective EEO policies;
(h) by creating and maintaining a discriminatory corporate culture;
(i) b y failing to implement any system for posting promotion opportunities within the company; and
(j) b y failing to provide store managers and executives with any EEO training.

8. Accordingly, in addition to bringing this action on their own behalf, Plaintiffs also bring this action on behalf of a class of similarly situated current and former employees of Defendants ("the Class"), in order to end Gristede's discriminatory policies and/or practices and to make the plaintiff class whole.

JURISDICTION AND VENUE

9. This Court has original subject matter jurisdiction over the Title VII claims pursuant to 28 U.S.C. §§ 1331 and 1343, because they arise under the laws of the United States and are brought to recover damages for deprivation of equal rights.

10. This Court has original jurisdiction over the NYSHRL and NYCHRL claims in this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). This is a putative class

action in which: (1) there are 100 or more members in the Class; (2) at least some members of the proposed class have a different citizenship from at least one Defendant; and (3) the claims of the proposed class members exceed $5,000,000.00 in the aggregate.

11. In addition, this Court has supplemental jurisdiction over the NYSHRL and NYCHRL claims under 28 U.S.C. § 1367, because they arise from a common nucleus of operative facts with the federal claims and are so related to the federal claims as to form part of the same case or controversy under Article III of the United States Constitution.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)-(c) and 42 U.S.C. § 2000e-5(f)(3), because Defendants have their headquarters and offices, conduct business, and can be found in this district, and the cause of action arose and the acts and omissions complained of occurred herein.

13. Plaintiffs have exhausted their administrative remedies and complied with all statutory prerequisites to their Title VII claims, by filing charges of discrimination with the Equal Employment Opportunity Commission ("EEOC") on July 8, 2005, and September 2, 2005. By notices dated September 26, 2006, the EEOC dismissed Plaintiffs' cases and issued Notices of Right to Sue.

14. Contemporaneously with the filing of this Complaint, Plaintiffs have mailed a copy of same, along with a letter of explanation, to the New York City Commission of Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of § 8-502 of the New York City Administrative Code.

15. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

The Plaintiffs

16. Plaintiff Hill is an African-American woman who lives in Bronx County, in the State of New York. She is a citizen of the United States.

17. Hill was employed part-time by Gristede's as a cashier from approximately February 1999 through June 2005.

18. Plaintiff Anderson is an African-American woman who lives in Bronx County, in the State of New York. She is a citizen of the United States.

19. Anderson was employed part-time by Gristede's as a cashier from approximately November 2004 through December 2004.

Defendant Gristede's Operating Corp.

20. Upon information and belief, Defendant Gristede's Operating Corp. is a domestic corporation doing business within the City and County of New York, and maintains corporate headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

21. Upon information and belief, Defendant Gristede's Operating Corp. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

22. During relevant times, Defendant Gristede's Operating Corp. was Plaintiffs' employer within the meaning of all applicable statutes.

23. On information and belief, at all times pertinent hereto, Defendant Gristede's Operating Corp. has employed more than fifty people.

Defendant Red Apple Group, Inc., d/b/a/ Gristede's

24. Upon information and belief, Defendant Red Apple Group, Inc. is a domestic corporation doing business within the City and County of New York, and maintains corporate

headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

25. Upon information and belief, Defendant Red Apple Group, Inc. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

26. During relevant times, Defendant Red Apple Group, Inc. was Plaintiffs' employer within the meaning of all applicable statutes.

27. On information and belief, at all times pertinent hereto, Defendant Red Apple Group, Inc. has employed more than fifty people.

Defendant Gristede's Foods, Inc.

28. Upon information and belief, Defendant Gristede's Foods, Inc. is a Delaware corporation doing business within the City and County of New York, and maintains offices within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

29. Upon information and belief, Defendant Gristede's Foods, Inc. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

30. During relevant times, Defendant Gristede's Foods, Inc. was Plaintiffs' employer within the meaning of all applicable statutes.

31. On information and belief, at all times pertinent hereto, Defendant Gristede's Foods, Inc. has employed more than fifty people.

Defendant Gristede's Delivery Services, Inc.

32. Upon information and belief, Defendant Gristede's Delivery Services, Inc. is a domestic corporation doing business within the City and County of New York, and maintains corporate headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

33. Upon information and belief, Defendant Gristede's Delivery Services, Inc. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

34. During relevant times, Defendant Gristede's Delivery Services, Inc. was Plaintiffs' employer within the meaning of all applicable statutes.

35. On information and belief, at all times pertinent hereto, Defendant Gristede's Delivery Services, Inc. has employed more than fifty people.

Defendant Gristede's Foods NY, Inc.

36. Upon information and belief, Defendant Gristede's Foods NY, Inc. is a domestic corporation doing business within the City and County of New York, and maintains corporate headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

37. Upon information and belief, Defendant Gristede's Foods NY, Inc. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

38. During relevant times, Defendant Gristede's Foods NY, Inc. was Plaintiffs' employer within the meaning of all applicable statutes.

39. On information and belief, at all times pertinent hereto, Defendant Gristede's Foods NY, Inc. has employed more than fifty people.

Defendant Gristede's NY, LLC

40. Upon information and belief, Defendant Gristede's NY, LLC is a domestic corporation doing business within the City and County of New York, and maintains corporate headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

41. Upon information and belief, Defendant Gristede's NY, LLC maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

42. During relevant times, Defendant Gristede's NY, LLC was Plaintiffs' employer within the meaning of all applicable statutes.

43. On information and belief, at all times pertinent hereto, Defendant Gristede's NY, LLC has employed more than fifty people.

Defendant Namdor, Inc.

44. Upon information and belief, Defendant Namdor, Inc. is a domestic corporation doing business within the City and County of New York, and maintains corporate headquarters within the City and County of New York at 823 Eleventh Avenue, New York, NY 10019.

45. Upon information and belief, Defendant Namdor, Inc. maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

46. During relevant times, Defendant Namdor, Inc. was Plaintiffs' employer within the meaning of all applicable statutes.

47. On information and belief, at all times pertinent hereto, Defendant Namdor, Inc. has employed more than fifty people.

CLASS ALLEGATIONS

48. Plaintiffs bring this Class Action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of a Class of all past, present, and future female employees of Gristede's in the United States. Plaintiffs reserve the right to amend the definition of the Class based on discovery or legal developments.

49. Plaintiffs are members of the Class they seek to represent.

50. The members of the Class identified herein are so numerous that joinder of all members is impracticable. As of the filing of this Complaint, Gristede's has approximately 800

or more female employees. Although the precise number of female employees is currently unknown, it is far greater than can be feasibly addressed through joinder.

51. There are questions of law and fact common to the Class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether Gristede's policies or practices discriminate against female employees; (2) whether Gristede's Human Resources Department has failed to implement policies and procedures to prevent discrimination against women in the workplace; (3) whether Gristede's policies or practices violate Title VII and/or the NYSHRL and/or the NYCHRL; and (4) whether equitable remedies, injunctive relief, compensatory, and punitive damages for the Class are warranted.

52. The Plaintiffs' claims are typical of the claims of the Class.

53. The Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions, employment discrimination litigation, and the intersection thereof.

54. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Gristede's has acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the Class as a whole. The Class members are entitled to injunctive relief to end Gristede's common, uniform, unfair and discriminatory policies and practices.

55. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because common questions of fact and law predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class members have been damaged and are entitled to recovery as a result of Gristede's common, uniform, unfair, and discriminatory

policies and practices. Gristede's has computerized account data, payroll, and personnel data that will make calculation of damages for specific Class members relatively simple. The propriety and amount of punitive damages are based on the conduct of the Defendants, making these issues common to the Class.

GENERAL POLICIES OR PRACTICES OF DISCRIMINATION

56. The denials and abridgments of employment opportunities suffered by the Plaintiffs are part of a general policy or practice of discrimination on the basis of gender in employment that has existed at Gristede's throughout the relevant time period. These are not isolated examples of employment practices or individual decisions. On the contrary, these incidents are representative of Gristede's systematic discrimination against female employees in favor of male employees.

57. From the time a woman initially seeks employment with the company, Gristede's subjects her to gender-based bias and discrimination.

58. When women apply for work at either Gristede's Headquarters or local Gristede's stores, Gristede's tells them the only positions for which they will be considered are cashier and/or bookkeeper.

59. When women inquire about other available positions, such as clerk, Gristede's representatives tell them that the company needs men for those positions.

60. As a result of these practices, Gristede's workforce is substantially segregated by gender.

61. As a result of segregating its workforce by gender, Gristede's has created a male-dominated environment that denies women equal opportunities.

62. Cashier and bookkeeper positions often pay less than clerk positions.

63. Cashier and bookkeeper positions are often given part-time status, as opposed to the full-time status afforded many clerk positions.

64. Gristede's gives more opportunities for extra hours and for full-time positions to clerks than to cashiers or bookkeepers.

65. Cashiers and bookkeepers are seldom promoted to management positions or other advanced positions within the company.

66. Gristede's uses the proverbial "tap on the shoulder" promotion selection system. Gristede's does not post promotional opportunities or open positions. Instead store and district managers, virtually all of whom are men, approach more junior men directly and on their own initiative about promotional opportunities.

67. Gristede's promotional selection system is discriminatory in that it perpetuates the historical exclusion of women from management positions and it permits excessive subjectivity by store and district managers, which they exercise in a discriminatory fashion. By entrusting these managers, virtually all of whom are men, with undue discretion in these matters, Gristede's maintains a system whereby store and district managers apply their own personal preferences and biases in making advancement decisions. This discriminatory promotional system is a uniform practice across all Gristede's stores.

68. Gristede's has intentionally implemented and maintained this discriminatory promotional system in order to favor male workers over female workers.

69. Gristede's has pursued policies or practices on a continuing basis that have had the purpose and effect of denying or restricting the availability of employment opportunities, compensation, promotions, and other favorable employment conditions to qualified females. Such discriminatory policies or practices include, without limitation:

(a) Systematically discriminating against women by placing them in part-time, lower paying positions than their male counterparts;

(b) Relying upon unweighted, subjective, gender-based and/or arbitrary criteria that a nearly all-male managerial workforce applies to make promotional and advancement decisions;

(c) Failing and refusing to take reasonable and adequate steps to eliminate the effects of Defendants' past discriminatory practices;

(d) Failing to provide women with the same quality and quantity of training and mentoring as is provided to men;

(e) Maintaining a discriminatory and gender-biased corporate culture;

(f) Making employment decisions based on gender; and

(g) Making employment decisions based on gender stereotypes.

PLAINTIFFS' FACTUAL ALLEGATIONS

Vanessa Hill

70. Representative Plaintiff Vanessa Hill was employed as a part-time cashier by Gristede's from approximately February 1999 through June 2005.

71. Hill was first employed at the Gristede's store on 100th Street and Broadway in New York, New York. She was later transferred to the Gristede's store on 89th Street and Lexington Avenue in New York, New York.

72. When Gristede's first hired Hill, it intentionally steered her into the cashier position because of her gender.

73. While working for Gristede's, Hill never saw postings of available management positions.

74. During Hill's employment at Gristede's, her managers never approached her about promotional opportunities within Gristede's.

75. Hill remained a part-time cashier during her entire tenure with Gristede's.

76. Upon information and belief, Hill was qualified for other positions, including management-level positions.

Margaret Anderson

77. Representative Plaintiff Margaret Anderson was employed as a part-time cashier by Gristede's from approximately November 2004 through December 2004.

78. Anderson was employed at the Gristede's store on 96th Street and Broadway in New York, New York.

79. When Gristede's first hired Anderson, it intentionally steered her into the cashier position because of her gender.

80. When Anderson went to Gristede's main office to apply for a position, the male who took her application told her that the position of cashier was available.

81. Anderson asked about other available positions, especially that of stock clerk, but the man told her that Gristede's needed "big guys" for stock positions and the only position for which he would consider her was that of cashier.

82. Gristede's did not consider Anderson for the position of stock clerk because she was a woman.

83. Anderson remained a part-time cashier during her entire tenure with Gristede's.

84. Upon information and belief, Anderson was qualified for other positions, including management-level positions.

CAUSES OF ACTION

First Claim for Relief

Intentional Discrimination
(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*)
(On Behalf of All Plaintiffs and the Class)

85. Plaintiffs incorporate by reference each allegation of each preceding paragraph.

86. Gristede's has intentionally maintained a system that discriminates on the basis of gender with respect to job placement, compensation, promotion, and other terms and conditions of employment.

87. Gristede's has intentionally discriminated against Plaintiffs and the Class in violation of Title VII by, among other things:

(a) treating them in a discriminatory manner based on their gender;

(b) denying them promotion opportunities because of their gender;

(c) denying them other opportunities for advancement because of their gender;

(d) providing them with less favorable compensation because of their gender;

(e) providing disparate terms and conditions of employment because of their gender; and

(f) failing to examine its workplace to correct gender-biased and discriminatory policies and failing to address problems of disparate treatment on the basis of gender.

88. The foregoing conduct constitutes illegal, intentional discrimination prohibited by 42 U.S.C. §§ 2000e *et seq.*

Second Claim for Relief
Disparate Impact Discrimination
(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*)
(On behalf of All Plaintiffs and the Class)

89. Plaintiffs incorporate the preceding paragraphs as alleged above.

90. Gristede's has maintained a system and/or policies that are discriminatory, subjective, standardless, and/or arbitrary with respect to the assignment of employees to employment positions and promotions, which affect compensation and other terms and conditions of employment. This system has an adverse impact on female employees and is not, and cannot be, justified by business necessity. Even if such system could be justified by business necessity, less discriminatory alternatives exist and would equally serve any alleged necessity.

91. The foregoing conduct constitutes illegal discrimination prohibited by 42 U.S.C. §§ 2000e *et seq.*

Third Claim for Relief
Intentional Discrimination
(NYSHRL, New York Executive Law § 296 *et seq.*)
(On Behalf of All Plaintiffs and the Class)

92. Plaintiffs incorporate by reference each allegation of each preceding paragraph.

93. Gristede's has maintained a system that discriminates on the basis of gender with respect to job placement, compensation, promotion, and other terms and conditions of employment.

94. Gristede's has intentionally discriminated against Plaintiffs and the Class in violation of NYSHRL by, among other things:

(g) treating them in a discriminatory manner based on their gender;

(h) denying them promotion opportunities because of their gender;

(i) denying them other opportunities for advancement because of their gender;

(j) providing them with less favorable compensation because of their gender;

(k) providing disparate terms and conditions of employment because of their gender; and

(l) failing to examine its workplace to correct gender-biased and discriminatory policies and failing to address problems of disparate treatment on the basis of gender.

95. The foregoing conduct constitutes illegal, intentional discrimination prohibited by New York Executive Law § 296 *et seq.*

Fourth Claim for Relief
Disparate Impact Discrimination
(NYSHRL, New York Executive Law § 296 *et seq.*)
(On behalf of All Plaintiffs and the Class)

96. Plaintiffs incorporate the preceding paragraphs as alleged above.

97. Gristede's has maintained a system and/or policies that are discriminatory, subjective, standardless, and/or arbitrary with respect to the assignment of employees to employment positions and promotions, which affect compensation and other terms and conditions of employment. This system has an adverse impact on female employees and is not, and cannot be, justified by business necessity. Even if such system could be justified by business necessity, less discriminatory alternatives exist and would equally serve any alleged necessity.

98. The foregoing conduct constitutes illegal discrimination prohibited by New York Executive Law § 296 *et seq.*

Fifth Claim for Relief
Intentional Discrimination
(NYCHRL, New York City Administrative Code §§ 8-101 *et seq.*)
(On behalf of All Plaintiffs and the Class)

99. Plaintiffs incorporate by reference each allegation of each preceding paragraph.

100. Gristede's has maintained a system that discriminates on the basis of gender with respect to job placement, compensation, promotion, and other terms and conditions of employment.

101. Gristede's has intentionally discriminated against Plaintiffs and the Class in violation of the NYCHRL by, among other things:

(a) treating them in a discriminatory manner based on their gender;

(b) denying them promotion opportunities because of their gender;

(c) denying them other opportunities for advancement because of their gender;

(d) providing them with less favorable compensation because of their gender;

(e) providing disparate terms and conditions of employment because of their gender; and

(f) failing to examine its workplace to correct gender-biased and discriminatory policies and failing to address problems of disparate treatment on the basis of gender.

102. The foregoing conduct constitutes illegal, intentional discrimination prohibited by the NYCHRL, New York City Administrative Code §§ 8-101 et seq.

Sixth Claim for Relief
Disparate Impact Discrimination
(NYCHRL, New York City Administrative Code §§ 8-101 *et seq.*)
(On behalf of All Plaintiffs and the Class)

103. Plaintiffs incorporate the preceding paragraphs as alleged above.

104. Gristede's has maintained a system and/or policies that are discriminatory, subjective, standardless, and/or arbitrary with respect to the assignment of employees to employment positions and promotions, which affect compensation and other terms and conditions of employment. This system has an adverse impact on female employees and is not, and cannot be, justified by business necessity. Even if such system could be justified by business necessity, less discriminatory alternatives exist and would equally serve any alleged necessity.

105. The foregoing conduct constitutes illegal discrimination prohibited by NYCHRL, New York City Administrative Code §§ 8-101 et seq.

ALLEGATIONS REGARDING RELIEF

106. Plaintiffs and the Class they seek to represent have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the Class they seek to represent are now suffering, and will continue to suffer, irreparable injury from Defendants' discriminatory acts and omissions.

107. Gristede's actions have caused and continue to cause Plaintiffs and all Class members substantial losses in earnings and other employment benefits.

108. In addition, Plaintiffs and the Class suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage.

109. Gristede's has performed the acts herein alleged with malice or reckless indifference. Plaintiffs and Class members are thus entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that upon trial this Court enter judgment:

(a) Certifying the case as a class action on behalf of the proposed Class;

(b) Designating Plaintiffs Vanessa Hill and Margaret Anderson as representatives of the Class;

(c) Designating Plaintiffs' counsel of record as Class counsel;

(d) Declaring that Defendants' actions and practices violate Title VII, the NYSHRL, and the NYCHRL, and constitute discrimination on the basis of gender;

(e) Permanently enjoining and restraining Defendants (and their officers, agents, and successors) from engaging in actions or practices that discriminate against Plaintiffs

or the Class because of their gender or participation in this lawsuit;

(f) Directing Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for all employees regardless of gender, and to eradicate the effects of its past and present unlawful employment practices;

(g) Directing Defendants to pay all damages sustained as a result of its conduct, including damages for emotional distress, humiliation, embarrassment, and anguish;

(h) Directing Defendants to pay punitive damages;

(i) Directing Defendants to pay all costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;

(j) Directing Defendants to pay pre-judgment and post-judgment interest, as provided by law; and

(k) Granting such other or additional relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Dated: New York, New York
October 19, 2006

Respectfully submitted,

OUTTEN & GOLDEN LLP
Attorneys for Plaintiffs and the Putative Class

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