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EEOC & Khan v. Abercrombie & Fitch Stores d/b/a Hollister Co. & Abercrombie Kids

Judge Edward J. Davila

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EEOC & Khan v. Abercrombie & Fitch Stores d/b/a Hollister Co. & Abercrombie Kids

Keywords

EEOC, Abercrombie & Fitch, Hollister, Abercrombie Kids, 5:11-cv-03162-EJD, consent decree, failure to accommodate, religion, retail, employment law, title VII, disparate treatment

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,
and

UMME-HANI KHAN,
Plaintiff-Intervenor,

vs.

ABERCROMBIE & FITCH STORES,
INC. d/b/a HOLLISTER CO.,
HOLLISTER CO. CALIFORNIA, LLC,

Defendants.

Case No.: CV 11-3162 YGR
Case No.: CV 10-03911- EJD

~~PROPOSED~~ **STIPULATED JUDGMENT AND
DECREE**

[Hon. Edward J. Davila]

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

ABERCROMBIE & FITCH STORES,
INC. d/b/a ABERCROMBIE KIDS,

Defendant.

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dba HOLLISTER CO., HOLLISTER CO. CALIFORNIA, LLC

1 Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and Plaintiff-
2 Intervenor Umme-Hani Khan (collectively, Plaintiffs) filed these actions under Title VII of the Civil
3 Rights Act of 1964 and the California Fair Employment and Housing Act (“FEHA”), alleging that
4 Defendants Abercrombie & Fitch Stores, Inc. d/b/a Hollister Co., and Hollister Co. California, LLC
5 (“Defendants”) violated Title VII and FEHA by failing to reasonably accommodate the religious
6 beliefs of Halla Banafa and Umme Hani Khan.

7 On September 3, 2013, in EEOC v. Abercrombie (CV 11-3162) the court granted plaintiff’s
8 motion for partial summary judgment as to liability on their claims that Abercrombie failed to
9 accommodate Khan’s religious beliefs under Title VII and FEHA.

10 For purposes of settlement and compromise only, Plaintiffs and Defendants (the “Parties”)
11 have advised the Court that they wish to resolve the instant controversies without the expense, delay,
12 and burden of further litigation.

13 The parties acknowledge that the settlement of these lawsuits and entry of this agreement,
14 with Defendants’ consent, is not and shall not be construed as an admission that Defendants have
15 violated the law. This agreement shall not be used as evidence of liability or non-liability for
16 unlawful discrimination, or for any other purpose, in any proceeding other than one relating to the
17 enforcement of the agreement.

18 THEREFORE, it is the finding of this Court, made on the pleadings, the record as a whole,
19 and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the
20 subject matter of these actions; (ii) the purposes of Title VII will be furthered by the implementation
21 of this Decree; (iii) this Decree is intended to and does resolve all matters in controversy in these
22 lawsuits between the Parties; and (iv) the terms of this Decree constitute a fair and equitable
23 settlement of all issues in these lawsuits.

24 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

25 **I. General Provisions**

26 1. Defendants shall not discriminate against any applicant or employee who makes
27 Defendants aware of a need for religious accommodation by failing to reasonably accommodate
28 such applicant or employee’s request for religious accommodation. Defendants shall grant requests

1 for religious accommodation unless Defendants are unable to reasonably accommodate the need or
2 request for religious observation or practice without undue hardship on the operation of its business.

3 2. Defendants shall not discriminate against any employee or applicant because such
4 employee or applicant has opposed any practices alleged in these lawsuits to be unlawful under Title
5 VII or FEHA, has participated in an investigation related to these lawsuits, has participated in these
6 lawsuits, and/or has benefited in any way as a result of this Stipulated Judgment and Decree.

7 **II. Relief Specific to Umme-Hani Khan**

8 3. Defendants agree to pay in settlement of all claims alleged against it by the Plaintiffs
9 on behalf of Umme-Hani Khan a total of \$48,000 (forty-eight thousand dollars and no cents), such
10 sum representing backpay and compensatory damages. One check, representing backpay, shall be
11 made payable to Ms. Khan in the amount of \$120, less any deductions for the employee's portion of
12 FICA and applicable federal, state and local tax withholdings. A separate check, representing
13 compensatory damages, shall be made payable to Ms. Khan in the amount of \$47,880 and shall be
14 designated as "other income" on IRS Form 1099. The checks shall be made payable to Umme-Hani
15 Khan and shall be delivered to her by means of certified mail, return receipt requested within fifteen
16 (15) days of the entry of this Decree. Defendants shall provide counsel for Plaintiffs with copies of
17 the checks within fifteen (15) days of mailing.

18 4. Defendants shall provide Umme-Hani Khan with a statement of regret for her
19 personal use only for the actions of its personnel that led to her filing her EEOC charge of
20 discrimination in this matter.

21 5. Defendants shall provide Umme-Hani Khan with a letter of reference within fifteen
22 (15) days of entry of this Decree.

23 6. Defendants certify that Umme-Hani Khan's personnel file does not contain any
24 references to her request for religious accommodation, EEOC charge, or the instant litigation.

25 7. Defendants shall change Ms. Khan's official reason for termination, as reflected in
26 her personnel file, to "quit."

27 8. The Parties agree that attorneys' fees and costs for Umme-Hani Khan will be
28 governed by a separate, confidential agreement entered into as a condition of this settlement.

1 **III. Relief Specific to Halla Banafa**

2 9. Defendants agree to pay in settlement of all claims alleged against it by the EEOC on
3 behalf of Halla Banafa a total of \$23,000 (twenty-three thousand dollars and no cents), such sum
4 representing backpay and compensatory damages. One check, representing backpay, shall be made
5 payable to Ms. Banafa in the amount of \$2,500 (two thousand five hundred dollars and no cents),
6 less any deductions for the employee's portion of FICA and applicable federal, state and local tax
7 withholdings. A separate check, representing compensatory damages, shall be made payable to Ms.
8 Banafa in the amount of \$20,500 (twenty thousand five hundred dollars and no cents) and shall be
9 designated as "other income" on IRS Form 1099. The checks shall be made payable to Halla Banafa
10 and shall be delivered to her by means of certified mail, return receipt requested within fifteen (15)
11 days of the entry of this Decree. Defendants shall provide counsel for EEOC with copies of the
12 checks within fifteen (15) days of mailing.

13 **IV. Injunctive Relief**

14 10. The parties acknowledge that the Defendants have adopted certain religious
15 discrimination policies and procedures, and agree to maintain those policies during the term of this
16 agreement. Defendants further agree to revise and supplement existing policies as follows:

17 11. Defendants shall adhere to, throughout the duration of the Decree, the revised
18 Accommodation Policy ("Policy") attached hereto as Exhibit A. The revised policy includes
19 creation of a process through which an applicant or employee may appeal the denial of a request for
20 religious accommodation to the Look Policy to Defendants' Director of Human Resources U.S., or
21 other individual of equivalent rank and function, for further review and determination of whether all
22 feasible options for accommodation have been explored. The applicant or employee shall receive
23 notice of the appeal process at the time the requested accommodation is denied, and the Director
24 shall review and decide the appeal within 14 business days of its receipt. Current employees will be
25 permitted to continue to work with the requested accommodation during the appeals process.

26 12. The Policy shall be contained in the Store Associate Handbook in whatever forms it is
27 made available to Defendants' employees, and a reference to the Policy shall appear in the table of
28 contents within sixty (60) days of the entry of this Stipulated Judgment and Decree. The Handbook's

1 discussion of the Look Policy shall include a reference to the Accommodation Policy, specifically
2 “for associates who may need accommodations from the Look Policy for religious or medical
3 reasons, please consult the Accommodation Policy in this handbook.”

4 13. Upon receiving a request for an accommodation of a sincerely-held religious belief
5 under the Policy, Defendants shall continue to consider the request, engage in an interactive process,
6 and offer a reasonable accommodation unless doing so would cause an undue hardship on the
7 operation of its business.

8 14. Defendants’ Specialty Group Interview Guide shall be revised to read as follows: “If
9 you have any questions or concerns about the Look Policy, or believe that you may require an
10 exception to Look Policy, please see me after this interview.” Within sixty (60) days of entry of this
11 Stipulated Judgment and Decree, Defendants will also revise the Kiosk and On-line application
12 process to inform applicants about Defendants’ Accommodation Policy.

13 15. Within sixty (60) days of the entry of this Stipulated Judgment and Decree,
14 Defendants shall: (1) require all current District Managers, Store Managers, and Assistant Store
15 Managers and Managers in Training to review the Policy; (2) inform them that employees may be
16 permitted to wear headscarves as set forth in the Policy; and (3) inform them that any request to be
17 allowed to wear a headscarf as a religious accommodation must be forwarded to the Human
18 Resources Department for consideration. In addition, Defendants shall include in all yearly training
19 sweeps conducted during the duration of the decree scenarios related to accommodations for
20 religious head coverings.

21 a. Within sixty (60) days of the entry of this Decree, Defendants shall adopt
22 systems to ensure uniform application of the Look Policy, including the institution of regular, but no
23 less than quarterly reviews, by the Director of Human Resources for Stores, U.S. or other individual
24 of equivalent rank and function, of all Look Policy religious accommodation decisions made in each
25 period to ensure that they are being handled consistently.

26 **V. Posting of Required Notices**

27 16. Within sixty (60) days of the Court’s entry of the Stipulated Judgment and Decree,
28 Defendants shall post at all stores owned by Defendants in the Hillsdale Shopping Center and

1 Milpitas Great Mall the notice attached hereto as Exhibit B. Such notice shall be posted on the
2 employee bulletin board or other similar conspicuous location throughout the duration of the decree.

3 **VI. Reporting and Monitoring**

4 17. Within ninety (90) days of the entry of the Stipulated Judgment and Decree,
5 Defendants shall provide Plaintiffs' counsel with written notice of their compliance with the
6 requirements set forth in Sections II through V.

7 18. During the term of the Stipulated Judgment and Decree, Defendants shall submit a
8 report every six (6) months to Plaintiffs' counsel. Such reports shall include:

- 9 a. a description of any employee or applicant request to be allowed to wear a
10 headscarf as a religious accommodation during the foregoing six (6) months;
- 11 b. the job held by or applied for by the requestor;
- 12 c. the name and address of the store where the request was made;
- 13 d. a confirmation that the request was granted; or, if the request was denied, the
14 reason for the denial;
- 15 e. if the request was denied, Defendants will provide the reason for the denial to
16 counsel for the EEOC. If the EEOC needs additional information regarding the denial,
17 counsel for the EEOC will contact Defendants' counsel within thirty (30) days to discuss the
18 denial. The EEOC shall be entitled to request and receive contact information for the
19 applicant or associate whose accommodation request was denied if, after the meeting
20 between counsel, the EEOC believes it needs to communicate directly with the applicant or
21 associate; and
- 22 f. the report shall also include a description of any changes in Defendants'
23 policies or practices related to religious accommodation governed by this Decree.

24 **VII. Term and Effect of Decree**

25 19. By entering into this Stipulated Judgment and Decree, the Parties do not intend to
26 resolve any charges of discrimination other than the charges filed by Umme-Hani Khan or Halla
27 Banafa that created the jurisdictional foundation for the Complaints filed in those cases.

28 20. This Decree shall be binding upon the Parties, their successors and assigns.

21. This Decree shall be in force for a period of three (3) years. During that period of time, the Court shall retain jurisdiction of this case for purposes of enforcement of the Stipulated Judgment and Decree and the separate, confidential agreement described in paragraph 8 herein. The term of the Stipulated Judgment and Decree can be extended only upon a showing that Defendants have substantially failed to comply with a material term thereof after having been given notice of any such failure to comply, and a reasonable opportunity to correct any such non-compliance.

Dated: September 18, 2013

//s// Marcia L. Mitchell
Marcia Mitchell
Sirithon Thanasombat
Attorneys for Plaintiff EEOC

Dated: September 18, 2013

//s// Christopher Ho
Christopher Ho
Marsha Chien

//s// Zahra Billoo
Zahra Billoo
Rachel Roberts
AttorneyS for Plaintiff-Intervenor KHAN

Dated: September 18, 2013

//s// Mark A. Knueve
Mark A. Knueve
Attorney for Defendants

IT IS SO ORDERED: The Order to Show Cause issued September 12, 2013, is DISCHARGED and the hearing VACATED. A copy of this order shall be filed in both case numbers and the clerk shall close both files.



HON. EDWARD J. DAVILA
U.S. District Court Judge

Exhibit A

Accommodation Policy

There may be occasions when an associate or applicant needs an accommodation to complete the essential functions of his or her job. The Company will accommodate associates and applicants who need such an accommodation for a disability or sincerely-held religious belief unless an accommodation creates an undue hardship on the business.

An applicant or associate who desires an accommodation for a disability or sincerely-held religious belief must make the Company aware of the need for an accommodation. To make a request for an accommodation, an associate must inform their District Manager of their request. When a request is made to a District Manager, the District Manager must contact Human Resources by calling (866) 367-1892. An applicant must inform his or her interviewing manager. When a request is made to an interviewing manager, the manager must contact Human Resources by calling (866) 367-1892.

A representative from the Human Resources department will contact the applicant or associate to discuss the request for accommodation, to explore options, and to determine whether an accommodation is possible without creating an undue hardship. The applicant or associate must cooperate with the Company's attempts to accommodate the request. In accordance with federal and state law, the Company will accommodate disabilities and the sincerely-held religious beliefs of its associates unless an accommodation would create an undue hardship.

If the associate wishes to appeal the denial of an accommodation, the associate may contact the Director of Human Resources, U.S. by calling (866) 367-1892.

EXHIBIT B [Company letterhead]

**IMPORTANT NOTICE TO ALL EMPLOYEES
CONCERNING RELIGIOUS ACCOMMODATIONS**

This notice is being posted pursuant to a Stipulated Judgment and Decree entered to resolve a claim of religious discrimination in the case of *Equal Employment Opportunity Commission v. Abercrombie & Fitch, Stores, Inc., d.b.a. Hollister Co. et al*, Case No. 11-CV-3162-YGR and *EEOC v. Abercrombie & Fitch Stores, Inc. dba abercrombie kids*, Case No. 10-cv-3911-EJD on file in the United States District Court for the Northern District of California.

Title VII of the Civil Rights Act of 1964 requires employers to grant an employee's request for religious accommodation in the workplace, unless the employer shows that it is unable to accommodate the request without undue hardship on its business. The California Fair Employment and Housing Act ("FEHA") gives employees similar legal rights.

In accordance with federal and state law, Abercrombie & Fitch will accommodate the sincerely-held religious beliefs of its applicants and associates, including granting exceptions to the Look Policy, as applicable unless doing so would create an undue hardship on its business. For example, under appropriate circumstances, Abercrombie & Fitch will permit employees to wear a headscarf ("hijab") at work in accordance with their sincerely-held religious beliefs.

An applicant or associate who desires an accommodation for a disability or sincerely-held religious belief must make the Company aware of the need for an accommodation. To make a request for an accommodation, an associate must inform their District Manager of their request. A Human Resources representative will contact the applicant or associate to discuss the request for reasonable accommodation, to explore options and to determine whether an accommodation is possible. If your request for accommodation is denied, you may appeal the decision to the Director of Human Resources for further review. You will receive a decision on the appeal within fourteen (14) days. Current employees will be permitted to continue to work with the requested accommodation during the appeals process.

Abercrombie & Fitch supports and will comply with Title VII and FEHA in all respects and will make every effort to accommodate requests relating to religious observance and/or practice, except for those instances where Abercrombie is unable to accommodate the request without undue hardship on the conduct of its business.

Employees also are free to make inquiries or complaints about Abercrombie's failure to accommodate a request relating to religious observance and/or practice to the U.S. Equal Employment Opportunity Commission, San Francisco District Office {Address and phone number to be provided by EEOC by November 1, 2013}

Date: _____

{title of Abercrombie official}

Under the terms of the Consent Decree, this notices must remain posted until {date}