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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO / OAKLAND DIVISION

EDUARDO GONZALEZ, ANTHONY  
OCAMPO, ENCARNACION  
GUTIERREZ, JOHAN MONTOYA,  
JUANCARLOS GOMEZ-MONTEJANO,  
JENNIFER LU, AUSTIN CHU, IVY  
NGUYEN, and ANGELINE WU, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

ABERCROMBIE & FITCH CO.,

Defendant.

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

**CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF AND DAMAGES, FOR  
VIOLATIONS OF 42 U.S.C. § 1981;  
CALIFORNIA FAIR EMPLOYMENT AND  
HOUSING ACT**

**DEMAND FOR JURY TRIAL**

1 Individual and Representative Plaintiffs Eduardo Gonzalez, Anthony Ocampo,  
2 Encarnacion Gutierrez, Johan Montoya, Juancarlos Gomez-Montejano, Jennifer Lu, Austin Chu,  
3 Ivy Nguyen, and Angeline Wu (collectively “Plaintiffs”) on behalf of themselves and all others  
4 similarly situated, allege, upon personal knowledge as to themselves and information and belief  
5 as to other matters, as follows:

6 **INTRODUCTORY STATEMENT**

7 1. Defendant Abercrombie & Fitch Company (“A&F,” “Abercrombie,” or  
8 “the Company”) is a national retail clothing seller that discriminates against minority individuals,  
9 including Latinos, Asian Americans, and African Americans (hereinafter, collectively,  
10 “minorities”) on the basis of race, color, and/or national origin, with respect to hiring, firing, job  
11 assignment, compensation and other terms and conditions of employment by enforcing a  
12 nationwide corporate policy of preferring white employees for sales positions, desirable job  
13 assignments, and favorable work schedules in its stores throughout the United States.

14 2. Abercrombie recruits, hires, and maintains a disproportionately white sales  
15 force (called Brand Representatives) who act as salespeople and recruiters of other potential  
16 Brand Representatives.

17 3. Abercrombie systematically refuses to hire qualified minority applicants as  
18 Brand Representatives to work on the sales floor and discourages applications from minority  
19 applicants. To the extent that it hires minorities, it channels them to stock room and overnight  
20 shift positions and away from visible sales positions, keeping them out of the public eye. In  
21 addition, Abercrombie systematically fires qualified minority Brand Representatives in  
22 furtherance of its discriminatory policies or practices.

23 4. Abercrombie implements its discriminatory employment policies and  
24 practices in part through a detailed and rigorous “Appearance Policy,” which requires that all  
25 Brand Representatives must exhibit the “A&F Look.” The “A&F Look” is a virtually all-white  
26 image that Abercrombie uses not only to market its clothing, but also to implement its  
27 discriminatory employment policies or practices.

28 5. When people who do not fit the “A&F Look” inquire about employment,

1 managers sometimes tell them that the store is not hiring, or may provide them with applications  
2 even though they have no intention of considering them for employment. If applicants who do  
3 not fit the “A&F Look” submit applications, managers and/or Brand Representatives acting at  
4 their direction sometimes throw them away without reviewing them.

5           6.       Abercrombie publishes and distributes to its employees a “Look Book” that  
6 explains the importance of the Appearance Policy and the “A&F Look,” and that closely regulates  
7 the Brand Representatives’ appearance. The Company requires its managers to hire and continue  
8 to employ only Brand Representatives who fit within the narrow confines of the “Look Book,”  
9 resulting in a disproportionately white Brand Representative workforce.

10           7.       Abercrombie also uses visual media to reinforce to managers responsible  
11 for recruitment, hiring, assignment, compensation, termination, and other terms and conditions of  
12 employment of Brand Representatives the importance of adhering to the virtually all-white A&F  
13 image in employment decisions. Each store prominently posts large photographs of models –  
14 virtually all of whom are white. In addition, the Company publishes and sells A&F Quarterly, a  
15 magazine/catalog featuring almost exclusively white models. Some stores also display A&F TV,  
16 a television program played on a loop featuring Brand Representatives who fit the “A&F Look.”  
17 Again, almost every Brand Representative shown is white. Abercrombie corporate  
18 representatives and managers use these displays and publications to portray and promote the  
19 “A&F Look” to employees, customers, applicants, and potential applicants, to discourage and  
20 deter minority applicants, and to justify terminating minority employees.

21           8.       The Company rigorously maintains the “A&F Look” by careful scrutiny  
22 and monitoring of its stores by regional and district managers and corporate representatives.  
23 These managers and corporate representatives visit stores frequently to ensure, among other  
24 things, that the store is properly implementing the Company’s discriminatory employment  
25 policies and practices. These visits are referred to as “blitzes.” When managers or corporate  
26 representatives discover that minority Brand Representatives have been hired, they have directed  
27 that these Brand Representatives be fired, moved to the stock room or overnight shift, or have  
28 their hours “zeroed out,” which is the equivalent of termination.

1           9.       The Company also scrutinizes and enforces compliance with the “A&F  
2 Look” by requiring all stores to submit a picture of roughly 10 of their Brand Representatives  
3 who fit the “Look” to headquarters each quarter. The corporate officials then select roughly 15  
4 stores’ pictures as exemplary models that perpetuate the Company’s discriminatory employment  
5 policies and practices. They then disseminate these pictures to the over 600 A&F stores. The  
6 Brand Representatives in the pictures are almost invariably white. This practice and policy, like  
7 the others described above, constitutes an official directive to give preference to white Brand  
8 Representatives and applicants, and to discriminate against minority Brand Representatives and  
9 applicants.

10           10.       The A&F image is not limited to appearance; the Company accomplishes  
11 its discriminatory employment policies or practices by defining its desired “classic” and “cool”  
12 workforce as exclusively white. It seeks to hire Brand Representatives who convey a certain  
13 image. This A&F image is decidedly non-minority. In order to perpetuate the A&F image,  
14 Abercrombie identifies specific colleges from which each store should recruit its employees, even  
15 though the Brand Representative position does not require any of the skills or abilities acquired in  
16 college, much less in any specific college. Abercrombie also encourages the recruitment and  
17 hiring of members of specified overwhelmingly white fraternities and sororities, and of students  
18 who participate in certain overwhelmingly white intercollegiate sports. However, the Company  
19 does not encourage recruitment from fraternities, sororities, or sports teams with significant  
20 minority populations. To further reinforce to store managers the importance of hiring white  
21 students who fit the Abercrombie image, the Company requires weekly reports on the number of  
22 Brand Representatives who attend targeted colleges and who fit the emphasis on  
23 fraternity/sorority membership and athletic team involvement.

24           11.       This class action is accordingly brought by minority Brand Representatives  
25 and applicants for Brand Representative positions on behalf of themselves individually and all  
26 minority applicants and employees against whom Abercrombie has discriminated on the basis of  
27 race, color, and/or national origin. Abercrombie has maintained and continues to maintain a  
28 pervasive policy or practice of discrimination based on race, color, and/or national origin in

1 denying employment, desirable job assignments, job transfers, allocation of weekly hours,  
2 compensation, and other terms and conditions of employment to minorities in Abercrombie stores  
3 throughout the United States.

4 12. This action seeks an end to these discriminatory policies or practices, an  
5 award of backpay and front pay, as well as compensatory damages, punitive damages, and  
6 injunctive relief, including rightful place relief for all class members.

7 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

8 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
9 and 1343.

10 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Members  
11 of the Plaintiff class reside in California and throughout the United States. Defendant  
12 Abercrombie is a Delaware corporation licensed to do business in California. It has retail stores  
13 throughout California and this District. Many of the acts complained of occurred in this State and  
14 this District and gave rise to the claims alleged.

15 15. Intradistrict assignment is proper in the San Francisco/Oakland Division  
16 because some of the events and omissions that give rise to the claims of Plaintiff Anthony  
17 Ocampo occurred in San Mateo County.

18 **PARTIES**

19 16. Plaintiff Eduardo Gonzalez is a minority resident of Palo Alto, California,  
20 where he is a student at Stanford University. He was denied a position as a Brand Representative  
21 at the Abercrombie store in the Valley Fair Mall in Santa Clara, California in August 2002, on  
22 account of his race, color, and/or national origin.

23 17. Plaintiff Anthony Ocampo is a minority resident of Palo Alto, California,  
24 where he is a student at Stanford University. He was denied a position as a Brand Representative  
25 at the Abercrombie store in the Hillsdale Shopping Center in San Mateo, California, in or around  
26 January 2000 on account of his race, color, and/or national origin. He was also denied a position  
27 as a Brand Representative at the Abercrombie Store in the Glendale Galleria in Glendale,  
28 California in June 2000 on account of his race, color, and/or national origin.

1                   18.     Plaintiff Encarnacion Gutierrez is a minority resident of South San  
2 Francisco, California. He was denied a position as a Brand Representative at the Abercrombie  
3 store in the Third Street Promenade in Santa Monica, California in June or July 2001, on account  
4 of his race, color, and/or national origin.

5                   19.     Plaintiff Johan Montoya is a minority resident of Goleta, California, where  
6 he is a student at the University of California at Santa Barbara. He was denied a position as a  
7 Brand Representative at the Abercrombie store in the Topanga Mall in Canoga Park, California in  
8 August or September 2002 on account of his race, color, and/or national origin.

9                   20.     Plaintiff Juancarlos Gomez-Montejano is a minority resident of Los  
10 Angeles, California. He was employed as a Brand Representative at the Abercrombie store at the  
11 Third Street Promenade in Santa Monica, California, from November 1998 to April 1999, when  
12 he was terminated on account of his race, color, and/or national origin.

13                   21.     Plaintiff Jennifer Lu is a minority resident of Irvine, California, where she  
14 is a student at the University of California at Irvine. She was employed as a Brand  
15 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,  
16 from September 2000 to February 2003, when she was terminated on account of her race, color,  
17 and/or national origin.

18                   22.     Plaintiff Austin Chu is a minority resident of Irvine, California, where he is  
19 a student at the University of California at Irvine. He was employed as a Brand Representative in  
20 the Abercrombie store in the Crystal Court Mall in Costa Mesa, California from June 2001 to  
21 March 2003, when he was constructively discharged on account of his race, color, and/or national  
22 origin.

23                   23.     Plaintiff Ivy Nguyen is a minority resident of Anaheim, California, where  
24 she is a student at the University of California at Irvine. She was employed as a Brand  
25 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,  
26 from June 2002 to February 2003, when she was terminated on account of her race, color, and/or  
27 national origin.

28                   24.     Plaintiff Angeline Wu is a minority resident of Irvine, California where she

1 is a student at the University of California at Irvine. She was employed as a Brand  
2 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,  
3 from August 2002 to February 2003, when she was terminated on account of her race, color,  
4 and/or national origin.

5 25. Defendant Abercrombie & Fitch Company is a Delaware corporation with  
6 its principal place of business at 6301 Fitch Path, New Albany, Ohio. Abercrombie maintains  
7 offices and does business in California, in this judicial District, and in this Division.  
8 Abercrombie is a national retail clothing seller primarily marketing to teenagers and young adults.  
9 According to the Company, it took in \$1.6 billion in revenue during fiscal year 2002, a 17%  
10 increase over the previous year. As of the end of the first quarter of 2003 (ended May 3, 2003),  
11 the Company operated 602 stores.

### 12 **CLASS ACTION ALLEGATIONS**

13 26. Plaintiffs bring this Class Action pursuant to Fed. R. Civ. P. 23(a), (b)(2),  
14 and (b)(3) on behalf of a class of all past, present, and future minority Abercrombie Brand  
15 Representatives and applicants for Brand Representative positions with Abercrombie who have  
16 been, continue to be, or in the future may be discouraged from applying or denied employment,  
17 desirable job assignments, job transfers, desirable hours, compensation, and/or other terms and  
18 conditions of employment on the basis of their race, color, and/or national origin, and/or who  
19 have been terminated on account of the policies or practices complained of herein.

20 27. Plaintiffs are members of the class they seek to represent.

21 28. The members of the class identified herein are so numerous that joinder of  
22 all members is impracticable. The number of class members is currently indeterminate, but is  
23 certainly larger than can be addressed through joinder. By the end of FY 2003 (ended February 1,  
24 2003), Abercrombie had approximately 22,000 employees. In addition, temporary employees are  
25 hired during peak periods, such as the holiday season. Each of Abercrombie's 600-odd stores  
26 employs very few minority Brand Representatives but each store, on average, annually receives  
27 numerous applications from qualified minorities who are potential Brand Representatives; as a  
28 result of Abercrombie's systematic discriminatory hiring practices, an unknown number of

1 minority applicants have also been deterred from applying. Thus, although the precise number of  
2 qualified minority applicants who are not hired and/or who are fired or otherwise discriminated  
3 against is currently unknown, it is far greater than can be feasibly addressed through joinder.

4           29. There are questions of law and fact common to the class, and these  
5 questions predominate over any questions affecting only individual members. Common  
6 questions include, among others: (1) whether Abercrombie's policies or practices discriminate  
7 against minority employees and applicants; (2) whether Abercrombie's use of the "A&F Look"  
8 and image as an employment policy or practice discriminates against minority applicants and  
9 employees; (3) whether Abercrombie's policies or practices violate 42 U.S.C. § 1981; and (4)  
10 whether compensatory and punitive damages, injunctive relief, and other equitable remedies for  
11 the class are warranted.

12           30. The representative Plaintiffs' claims are typical of the claims of the class.

13           31. The representative Plaintiffs will fairly and adequately represent and  
14 protect the interests of the members of the class. Plaintiffs have retained counsel competent and  
15 experienced in complex class actions, employment discrimination litigation, and the intersection  
16 thereof.

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

22           33. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)  
23 because common questions of fact and law predominate over any questions affecting only  
24 individual members of the class, and because a class action is superior to other available methods  
25 for the fair and efficient adjudication of this litigation. The class members have been damaged  
26 and are entitled to recovery as a result of Abercrombie's common, uniform, and unfair racially  
27 discriminatory personnel policies and practices. Abercrombie has computerized payroll and  
28 personnel data that will make calculation of damages for specific class members relatively



1 simple. The propriety and amount of punitive damages are issues common to the class.

2 **CLAIMS OF REPRESENTATIVE PLAINTIFFS**

3 **Eduardo Gonzalez**

4 34. Plaintiff Eduardo Gonzalez, a Latino male, is a student at Stanford  
5 University. He applied for a position as a Brand Representative at the Abercrombie store in the  
6 Valley Fair Mall in Santa Clara, California on August 7, 2002. An Abercrombie manager  
7 suggested that he apply to work in the stock room or on the overnight crew in a non-sales  
8 position. Nevertheless, Mr. Gonzalez returned to the store for a group interview for the Brand  
9 Representative position on August 27, 2002. Mr. Gonzalez was not hired as a Brand  
10 Representative. Mr. Gonzalez was qualified for the job. Indeed, immediately following his  
11 Abercrombie interview, he crossed the hall within the same mall to apply for a job at Banana  
12 Republic, a similar retail clothing store that competes directly with Abercrombie for customers  
13 and employees. An employee of Banana Republic asked Mr. Gonzalez if he was interested in  
14 applying to work as a manager. He applied to work as a sales associate, and is still employed by  
15 Banana Republic in that capacity. Despite knowing of his qualifications, Abercrombie refused to  
16 hire Mr. Gonzalez based on his race, color, and/or national origin.

17 35. Abercrombie has discriminated against Mr. Gonzalez on the basis of his  
18 race, color and/or national origin by denying him employment because he is not white.

19 36. On or about April 25, 2003, Mr. Gonzalez filed a charge of discrimination  
20 with the Equal Employment Opportunity Commission (“EEOC”). Mr. Gonzalez received a copy  
21 of his Notice of Right to Sue from the California Department of Fair Employment and Housing  
22 (“DFEH”), dated April 29, 2003. Attached to this Complaint as Exhibit A and incorporated by  
23 reference, are copies of that charge and that notice.

24 **Anthony Ocampo**

25 37. Plaintiff Anthony Ocampo, a Filipino American male, is a student at  
26 Stanford University. From December 1999 to January 2000, he worked part time as a Brand  
27 Representative at the Abercrombie store in the Glendale Galleria in Glendale, California near his  
28 family’s home.

1           38.     It is common practice at Abercrombie for college students to work at the  
2 Abercrombie near their family home during vacations, and then to transfer to a store near their  
3 college during the school year (or vice versa). Therefore, when Mr. Ocampo returned to  
4 Stanford, he attempted to apply for a position as Brand Representative at the Abercrombie store  
5 in the Hillsdale Shopping Center in San Mateo, California. Mr. Ocampo was told that he would  
6 be contacted regarding a stock person position, but not for the position of Brand Representative.  
7 Mr. Ocampo never was contacted for any position with Abercrombie, and when he contacted the  
8 manager there, he was told that he would have to reapply.

9           39.     Later that year, when he returned home for summer vacation in June of  
10 2000, Mr. Ocampo applied to work once again at the Glendale Galleria Abercrombie. He was  
11 told that there were “too many Filipinos” working at that location. He was not even given the  
12 opportunity to submit a written application. Mr. Ocampo was qualified for the job of Brand  
13 Representative, in part based on his prior experience doing that exact job at the Abercrombie  
14 store in the Glendale Galleria. Abercrombie refused to hire Mr. Ocampo, despite knowing of his  
15 qualifications, based on his race, color, and/or national origin.

16           40.     Abercrombie has discriminated against Mr. Ocampo on the basis of his  
17 race, color and/or national origin (a) by denying him employment because he is not white; and  
18 (b) by refusing to transfer him from one store to another on the same terms as white Brand  
19 Representatives.

20     **Encarnacion Gutierrez**

21           41.     Plaintiff Encarnacion Gutierrez, a Latino male, graduated from the  
22 University of California at Los Angeles in 2002 with a B.S. in Civil Engineering and from the  
23 University of California at Berkeley in 2003 with an M.S. in Structural Engineering. He applied  
24 to work as a Brand Representative at the Abercrombie store in the Third Street Promenade in  
25 Santa Monica, California in June or July 2001, and later returned for a group interview.  
26 Mr. Gutierrez was qualified for the job. Abercrombie refused to hire Mr. Gutierrez, despite  
27 knowing of his qualifications, based on his race, color, and/or national origin.

28           42.     During his initial visit to the store, Mr. Gutierrez observed that the staff

1 was virtually exclusively white. The manager who conducted the group interview was white. He  
2 asked no questions regarding prior work experience or relevant skills. During the interview, the  
3 manager asked a Filipino-American applicant whether he spoke English even though the  
4 applicant had already answered several questions and demonstrated his fluency in English.  
5 Mr. Gutierrez saw the manager write “phil” next to the applicant’s name.

6 43. Abercrombie has discriminated against Mr. Gutierrez on the basis of his  
7 race, color, and/or national origin by denying him employment because he is not white.

8 44. On or about May 21, 2002, Mr. Gutierrez filed a charge of discrimination  
9 with the EEOC. Attached to this Complaint as Exhibit B, and incorporated by reference, is a  
10 copy of that charge.

11 **Johan Montoya**

12 45. Plaintiff Johan Montoya, a Latino male, is a student at the University of  
13 California at Santa Barbara. He applied for a position as a Brand Representative at the  
14 Abercrombie store in the Topanga Mall in Canoga Park, California in August or September 2002,  
15 participated in a group interview for the job and submitted a paper application. He was qualified  
16 for the job, in part based on his prior work experience as a sales associate at another retail  
17 establishment in the same mall. Abercrombie refused to hire Mr. Montoya despite knowing of his  
18 qualifications, based on his race, color, and/or national origin.

19 46. Abercrombie has discriminated against Mr. Montoya on the basis of his  
20 race, color, and/or national origin by denying him employment because he is not white.

21 47. On or about April 22, 2003, Mr. Montoya filed a charge of discrimination  
22 with the EEOC. Mr. Montoya received a copy of his Notice of Right to Sue from the DFEH,  
23 dated April 29, 2003. Attached to this Complaint as Exhibit C and incorporated by reference, are  
24 copies of that charge and that notice.

25 **Juancarlos Gomez-Montejano**

26 48. Plaintiff Juancarlos Gomez-Montejano, a Latino male, worked as a Brand  
27 Representative at the Abercrombie store at the Third Street Promenade in Santa Monica,  
28 California from November 22, 1998 until August 1999, while he was a student at the University

1 of California at Los Angeles. During that time, he regularly worked roughly 10-15 hours per  
2 week. After noticing that his work hours had been reduced, Mr. Gomez-Montejano requested his  
3 personnel file. In August 1999 he learned that Company records showed that, unbeknownst to  
4 him, he had been fired from his position. He had never been previously informed of this  
5 termination, nor was he advised of any reasons for the termination.

6           49. In or around February or March 1999, Abercrombie representatives from  
7 Ohio corporate headquarters visited the store on a “blitz,” and observed that there were  
8 photographs of each of the Brand Representatives posted in an employee area in the back. A  
9 corporate official pointed to the pictures of four or five minority Brand Representatives, including  
10 Mr. Gomez-Montejano, and directed store management to “zero them out.” This expression is  
11 used within the Company to signify that the manager assigning work shifts should begin  
12 assigning that person zero hours each week. In the following weeks, Mr. Gomez-Montejano  
13 continued to inform his manager that he was available to work many hours a week, just as he had  
14 throughout his tenure at Abercrombie; however, each week he received a schedule giving him  
15 zero hours. Eventually, he realized that this “zeroed out” schedule might be permanent.  
16 Therefore, he requested his personnel file in July 1999, and, after his second request, received a  
17 copy of a company document stating that he had been terminated.

18           50. Abercrombie has discriminated against Mr. Gomez-Montejano on the basis  
19 of his race, color, and/or national origin by (a) terminating his employment because he is not  
20 white; and (b) refusing to give him desirable hours/assignments on the same terms as white Brand  
21 Representatives.

22           51. On or about December 21, 1999, Mr. Gomez-Montejano filed a charge of  
23 discrimination with the EEOC. Attached to this Complaint as Exhibit D, and incorporated by  
24 reference, is a copy of that charge. After investigating, the EEOC issued a Letter of  
25 Determination, finding that Abercrombie had discriminated against Mr. Gomez-Montejano and  
26 against “Latinos and Blacks, as a class.” Attached to this Complaint as Exhibit E, and  
27 incorporated by reference, is a copy of that letter. On or about December 21, 1999, the DFEH  
28 issued to Mr. Gomez-Montejano a Notice of Right to Sue. Attached to this Complaint as

1 Exhibit F, and incorporated by reference, is a copy of that notice.

2 **Jennifer Lu**

3 52. Plaintiff Jennifer Lu is an Asian American female and a student at the  
4 University of California at Irvine. She worked as a Brand Representative at the Abercrombie  
5 store in the Crystal Court Mall in Costa Mesa, California from September 2000 to February 2003.  
6 She was entrusted with responsibilities that only the most trustworthy and more senior staff were  
7 given.

8 53. In or around January 2003, representatives from corporate and/or regional  
9 headquarters visited the Crystal Court Mall store on an inspection tour, or “blitz.” These  
10 headquarters/regional representatives reiterated to the Store Manager and other managers the  
11 importance of having a predominantly white Brand Representative workforce, with fewer  
12 minorities. Specifically, corporate employees communicated this directive by pointing to a  
13 picture of a white male model hanging in the store, and making a statement to the effect of “This  
14 is the ‘A&F Look’ – you need to make your store look more like this.” Soon after this “blitz,” on  
15 or about February 8, 2003, roughly five Asian American Brand Representatives, including  
16 Plaintiffs Jennifer Lu, Austin Chu, Ivy Nguyen, and Angeline Wu were terminated and/or  
17 constructively discharged, and one African American Brand Representative was transferred to a  
18 behind-the-scenes stockroom position at another Abercrombie store. This action was not  
19 premised on any legitimate business consideration, such as a lessened need for Brand  
20 Representatives or poor work performance. The store hired approximately five to seven white  
21 Brand Representatives within two weeks of firing Ms. Lu.

22 54. On February 8, 2003, Ms. Lu learned that she had been fired. She  
23 informed the Store Manager that she was willing to be flexible with shift assignments, and that if  
24 the staffing needs picked up in the summer months or other peak shopping seasons, she would  
25 like to be considered. Mr. Richter told her that she was not needed at that time nor would she be  
26 needed in the future.

27 55. Abercrombie has discriminated against Ms. Lu on the basis of her race,  
28 color, and/or national origin by (a) terminating her employment because she is not white; and

1 (b) assigning her fewer hours than similarly-situated white Brand Representatives.

2 56. On or about April 22, 2003, Ms. Lu filed a charge of discrimination with  
3 the EEOC. Ms. Lu received a copy of her Notice of Right to Sue from the DFEH, dated April 29,  
4 2003. Attached to this Complaint as Exhibit G and incorporated by reference, are copies of that  
5 charge and that notice.

6 **Austin Chu**

7 57. Plaintiff Austin Chu is an Asian American male and a student at the  
8 University of California at Irvine. He worked as a Brand Representative at the Abercrombie store  
9 in the Crystal Court Mall in Costa Mesa, California from June 2001 to March 2003, when he was  
10 constructively discharged.

11 58. Immediately after the January corporate “blitz” visit described herein in the  
12 preceding paragraphs, Mr. Chu’s hours were reduced from the usual 10-15 hours per week he had  
13 worked during his year and a half tenure to roughly zero hours per week. This “zeroing out”  
14 began on or about February 8, 2003 and lasted until approximately March 26, 2003, during which  
15 six-week period Mr. Chu was assigned only one four-hour shift (in contrast to his usual 60-90  
16 hours for such a six-week period), despite notifying his managers each week of his availability  
17 and interest in working the usual 10-15 hours per week. Mr. Chu attempted to gain more hours  
18 by offering to fill in for those who were unavailable, and he was denied the opportunity to work  
19 more hours. Because he was not assigned any hours to work, Mr. Chu tendered his resignation on  
20 March 26, 2003. Mr. Chu was known as one of the most effective Brand Representatives in the  
21 store due to his gregarious nature.

22 59. Abercrombie has discriminated against Mr. Chu on the basis of his race,  
23 color, and/or national origin by (a) constructively terminating his employment because he is not  
24 white; and (b) assigning him fewer hours than similarly-situated white Brand Representatives.

25 60. On or about April 22, 2003, Mr. Chu filed a charge of discrimination with  
26 the EEOC. Mr. Chu received a copy of his Notice of Right to Sue from the DFEH, dated  
27 April 29, 2003. Attached to this Complaint as Exhibit H and incorporated by reference, are  
28 copies of that charge and that notice.

1 **Ivy Nguyen**

2 61. Plaintiff Ivy Nguyen is an Asian American female and a student at the  
3 University of California at Irvine. She worked as a Brand Representative in the Abercrombie  
4 store in the Crystal Court Mall in Costa Mesa, California from approximately June 2002 until she  
5 was fired sometime during February 2003, shortly after the corporate “blitz” described herein in  
6 the preceding paragraphs.

7 62. Abercrombie has discriminated against Ms. Nguyen on the basis of her  
8 race, color, and/or national origin by (a) terminating her employment because she is not white;  
9 and (b) assigning her fewer hours than similarly-situated white Brand Representatives.

10 63. On or about June 16, 2003, Ms. Nguyen filed a charge of discrimination  
11 with the EEOC. Attached to this Complaint as Exhibit I and incorporated by reference, is a copy  
12 of that charge.

13 **Angeline Wu**

14 64. Plaintiff Angeline Wu is an Asian American female and a student at the  
15 University of California at Irvine. She worked as a Brand Representative at the Abercrombie  
16 store in the Crystal Court Mall in Costa Mesa, California from August 2002 to February 2003.

17 65. Ms. Wu worked approximately 5-10 hours a week, at least 2-3 shifts per  
18 week. Shortly after the corporate “blitz” described herein in the preceding paragraphs, Ms. Wu's  
19 hours were reduced and eventually “zeroed out.” Ms. Wu was then terminated in February 2003.

20 66. Abercrombie has discriminated against Ms. Wu on the basis of her race,  
21 color, and/or national origin by (a) terminating her employment because she is not white; and  
22 (b) assigning her fewer hours than similarly-situated white Brand Representatives.

23 67. On or about April 17, 2003, Ms. Wu filed a charge of discrimination with  
24 the EEOC. Ms. Wu received a copy of her Notice of Right to Sue from the DFEH, dated  
25 April 22, 2003. Attached to this Complaint as Exhibit J and incorporated by reference, are copies  
26 of that charge and that notice.

27 **GENERAL POLICIES OR PRACTICES OF DISCRIMINATION**

28 68. The denials and abridgments of employment opportunities suffered by the

1 Representative Plaintiffs are part of a general policy or practice of discrimination on the basis of  
2 race, color, and/or national origin in employment that has existed at Abercrombie throughout the  
3 relevant time. These are not isolated examples of employment practices or individual decisions.  
4 On the contrary, these incidents are representative of A&F's systematic discrimination against  
5 minorities and in favor of white applicants and employees, to create an overwhelmingly white  
6 Brand Representative workforce.

7 69. On September 13, 2001, the EEOC issued a Letter of Determination with  
8 respect to the EEOC charge filed by Plaintiff Juancarlos Gomez-Montejano, stating,

9 The preponderance of the evidence supports Charging Party's claim  
10 that he was denied a permanent position as a Brand Representative,  
11 denied an assignment and terminated because of his national origin.  
12 Moreover, evidence obtained during the course of the investigation  
13 revealed that *Latinos and Blacks, as a class, were denied*  
14 *permanent positions, denied assignments and treated in an unfair*  
15 *manner with regard to recruitment based on their race and national*  
16 *origin, and that Respondent failed to maintain employment records*  
17 *as required by Title VII. Therefore, I have concluded that the*  
18 *evidence is sufficient to establish a violation of the above-cited*  
19 *statute.*

20 Attached hereto as Exhibit E (emphasis added).

21 70. The EEOC sent this letter to Mr. Gomez-Montejano and to Abercrombie.

22 71. The under-representation of minorities in Brand Representative positions  
23 throughout Abercrombie's approximately 602 stores in the United States results from an  
24 intentional policy and practice of discrimination on the basis of race, color, and/or national origin  
25 in hiring, initial job assignment, weekly hours allocation, internal job transfer, inter-store transfer,  
26 and termination.

27 72. Abercrombie has pursued policies or practices on a continuing basis that  
28 have denied or restricted job opportunities to qualified minority applicants and employees.

73. Such discriminatory policies or practices include, without limitation:

a. reliance on subjective, arbitrary, standardless, and unvalidated  
criteria in making hiring decisions, focusing on whether applicants properly reflect the  
predominantly white "A&F Look" and image rather than whether they would be responsible,



1 effective Brand Representatives who could perform their jobs well;

2 b. reliance on subjective, arbitrary, standardless, and unvalidated  
3 criteria in making decisions in job assignments, weekly hour allocations, and ability to transfer  
4 between stores focusing on whether employees properly reflect the predominantly white “A&F  
5 Look” and image rather than whether they would be responsible, effective Brand Representatives  
6 who perform their jobs well;

7 c. shunting minority applicants and Brand Representatives to stock  
8 room and overnight shift positions where they are out of the public eye;

9 d. targeting white candidates for recruitment, both systemically (e.g.,  
10 recruiting visits to college campuses and/or targeting of specific sororities and fraternities) and  
11 individually (e.g., inviting individual customers in the store to apply to become Brand  
12 Representatives), but avoiding, ignoring, discouraging or dissuading equally qualified minorities  
13 from applying;

14 e. use of the “Look Book,” the A&F Quarterly, and wall posters as  
15 guidelines for management to select Brand Representatives on the basis of their appearance – e.g.,  
16 white – as opposed to their qualifications for the job;

17 f. use of corporate “blitzes” to monitor and enforce stores’  
18 compliance with the “A&F Look” and to weed out minority Brand Representatives; and

19 g. termination of employees based on race, color, and/or national origin  
20 without regard to their performance on the job.

21 **FIRST CLAIM FOR RELIEF**  
22 **(42 U.S.C. § 1981)**

23 74. Plaintiffs incorporate paragraphs 1 through 73 as alleged above.

24 75. This claim is brought on behalf of all Plaintiffs and the Class they  
25 represent.

26 76. Abercrombie has maintained an intentionally discriminatory system with  
27 respect to recruitment, hiring, job assignments, transfers, weekly hour allocations, and  
28 termination.



1 86. As noted above, the EEOC has determined that “the evidence is sufficient  
2 to establish” that Abercrombie has violated Title VII, because “Latinos and Blacks, as a class,  
3 were denied permanent positions, denied assignments and treated in an unfair manner with regard  
4 to recruitment based on their race and national origin.” Exhibit E.

5 87. In light of its ongoing investigation of Plaintiffs’ administrative charges,  
6 the EEOC has not yet issued right to sue letters to Plaintiffs. When the EEOC issues such letters,  
7 Plaintiffs intend to amend the instant Complaint to assert a claim for relief under Title VII of the  
8 Civil Rights Act of 1964, 42 U.S.C. sections 2000e, et seq., because the foregoing policies or  
9 practices constitute intentional discrimination or unjustified disparate impact.

10 **ALLEGATIONS REGARDING RELIEF**

11 88. Plaintiffs, and the class they seek to represent, have no plain, adequate, or  
12 complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in  
13 this action is the only means of securing complete and adequate relief. Plaintiffs, and the class  
14 they seek to represent, are now suffering and will continue to suffer irreparable injury from  
15 defendant’s discriminatory acts and omissions.

16 89. Abercrombie’s actions have caused and continue to cause plaintiffs and all  
17 class members substantial losses in earnings, work experience, weekly hour allocations, and other  
18 employment benefits.

19 90. In addition, named plaintiffs and the class suffer and continue to suffer  
20 humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

21 91. Abercrombie performed the acts herein alleged with malice or reckless  
22 indifference. Plaintiffs and class members are thus entitled to recover punitive damages in an  
23 amount according to proof.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiffs and the class pray for relief as follows:

26 92. Certification of the case as a class action on behalf of the proposed class;

27 93. Designation of Representative Plaintiffs Eduardo Gonzalez, Anthony  
28 Ocampo, Encarnacion Gutierrez, Johan Montoya, Juancarlos Gomez-Montejano, Jennifer Lu,

1 Austin Chu, Ivy Nguyen, and Angeline Wu as representatives of the class;

2 94. Designation of Representative Plaintiffs' counsel of record as class  
3 counsel;

4 95. A declaratory judgment that the practices complained of herein are  
5 unlawful and violate 42 U.S.C. § 1981;

6 96. A preliminary and permanent injunction against Abercrombie and its  
7 officers, agents, successors, employees, representatives, and any and all persons acting in concert  
8 with them, from engaging in each of the unlawful policies, practices, customs, and usages set  
9 forth herein;

10 97. An order that Abercrombie institute and carry out policies, practices, and  
11 programs that provide equal employment opportunities for all minorities, and that it eradicate the  
12 effects of its past and present unlawful employment practices;

13 98. An order restoring plaintiffs and class members to their rightful positions at  
14 Abercrombie, or in lieu of reinstatements, an order for front pay benefits;

15 99. Back pay (including interest and benefits) for individual plaintiffs and class  
16 members;

17 100. All damages sustained as a result of Abercrombie's conduct, including  
18 damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;

19 101. Exemplary and punitive damages in an amount commensurate with  
20 Abercrombie's ability to pay and to deter future conduct;

21 102. Costs incurred herein, including reasonable attorneys' fees to the extent  
22 allowable by law;

23 103. Pre-judgment and post-judgment interest, as provided by law; and

24 104. Such other and further legal and equitable relief as this Court deems  
25 necessary, just, and proper.

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Dated: June \_\_, 2003

Respectfully submitted,

Thomas A. Saenz  
Shaheena Ahmad Simons  
MEXICAN AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND

Julie Su  
Minah Park  
ASIAN PACIFIC AMERICAN LEGAL CENTER

Kimberly West-Faulcon  
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Ivy Nguyen, and Angeline Wu

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: June \_\_, 2003

Respectfully submitted,

Thomas A. Saenz  
Shaheena Ahmad Simons  
MEXICAN AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND

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