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ABERCROMBIE & FITCH STORES, INC.,
A&F CALIFORNIA, LLC, A&F OHIO, INC. and
A&F MANAGEMENT CO., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

ABERCROMBIE & FITCH STORES,
INC., A&F CALIFORNIA, LLC, A&F
OHIO, INC., A&F MANAGEMENT CO.,
INC. and DOES 1-10, Inclusive,

Defendants.

Case No. C04-4731 TEH

**ANSWER OF DEFENDANTS
ABERCROMBIE & FITCH STORES, INC.,
A&F CALIFORNIA, LLC, A&F OHIO, INC.
AND A&F MANAGEMENT CO., INC. TO
COMPLAINT**

ANSWER TO COMPLAINT

NOW COME Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, A&F
Ohio, Inc., and Abercrombie & Fitch Management Co., sued incorrectly herein as A&F

1 Management Co. (collectively "Defendants"), by and through counsel, and for their Answer to
2 the Complaint ("Complaint") filed by the Equal Employment Opportunity Commission
3 ("EEOC"), hereby make the following admissions, denials, averments, and affirmative defenses:

4 1. For their response to paragraph 1 of the Complaint, Defendants state the EEOC
5 purports to invoke jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345.

6 Defendants state that the EEOC brings this action pursuant to section 706(f)(1) and (3) and
7 Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended
8 ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

9 2. Defendants state that the EEOC brings claims based, in part, on practices it alleges
10 took place within the jurisdiction of the United States District Court for California, Northern
11 District. Defendants deny that any unlawful employment practices were or are now being
12 committed.

13 3. Defendants admit that the EEOC is authorized to bring actions pursuant to
14 Sections 706(f)(1) and (3), and 707 of Title VII. Defendants deny that this action is appropriate.

15 4. Defendants admit the allegations contained in paragraph 4 of the Complaint.

16 5. Defendants admit that they have continually had at least 15 employees.
17 Defendants admit that A&F California, LLC has continually been doing business in the State of
18 California and within this District since May 3, 2002. Defendants assert that A&F California,
19 LLC is an Ohio limited liability company and operates retail clothing stores in California since
20 May 3, 2002. Defendants state that A&F Ohio, Inc. is incorporated in Ohio and has operated
21 retail clothing stores in Ohio since April 26, 2002. Defendants state that Abercrombie & Fitch
22 Stores, Inc. is an Ohio corporation and operates retail clothing stores in some other states since
23 May 2002. Defendants state that between August 9, 2000 and April 26, 2002, Abercrombie &
24 Fitch Stores, Inc., the Ohio corporation, operated all Abercrombie stores. Defendants state that
25 between July 1996 and August 9, 2000, Abercrombie & Fitch Stores, Inc., a Delaware
26 corporation, operated all Abercrombie stores. Defendants state that Abercrombie & Fitch
27 Management Co. has been incorrectly identified herein as A&F Management Co. Defendants
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1 deny the remaining allegations contained in paragraph 5 of the Complaint.

2 6. Defendants admit that A&F California, LLC is an Ohio limited liability company
3 and is a wholly owned subsidiary of Abercrombie & Fitch Management Co. and that it has
4 operated retail stores in California in May 2002 and deny the remaining allegations contained in
5 paragraph 6 of the Complaint.

6 7. Defendants admit that A&F Ohio, Inc. is an Ohio corporation, and a wholly owned
7 subsidiary of Abercrombie & Fitch Management Co. and that it has operated retail stores in Ohio
8 since May 2002, and deny the remaining allegations contained in paragraph 7 of the Complaint.

9 8. Defendants admit that Abercrombie & Fitch Management Co. supervises some of
10 Abercrombie's corporate office functions in Ohio and deny the remaining allegations in
11 paragraph 8 of the Complaint.

12 9. Defendants admit the allegations contained in paragraph 9 of the Complaint.

13 10. Defendants admit that the EEOC brings claims against Doe Defendants 1 through
14 10. Defendants deny the remaining allegations contained in paragraph 10 of the Complaint.

15 11. Defendants deny the allegations contained in paragraph 11 of the Complaint.

16 12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

17 13. Defendants admit the allegations contained in paragraph 13 of the Complaint.

18 14. Defendants deny the allegations contained in paragraph 14 of the Complaint.

19 A. Defendants deny the allegations contained in paragraph 14A of the
20 Complaint.

21 B. Defendants deny the allegations contained in paragraph 14B of the
22 Complaint.

23 C. Defendants deny the allegations contained in paragraph 14C of the
24 Complaint.

25 D. Defendants deny the allegations contained in paragraph 14D of the
26 Complaint.

27 E. Defendants deny the allegations contained in paragraph 14E of the
28

1 Complaint.

2 F. Defendants deny the allegations contained in paragraph 14F of the
3 Complaint.

4 G. Defendants deny the allegations contained in paragraph 14G of the
5 Complaint.

6 15. Defendants deny the allegations contained in paragraph 15 of the Complaint.

7 16. Defendants deny the allegations contained in paragraph 16 of the Complaint.

8 17. Defendants deny the allegations contained in paragraph 17 of the Complaint.

9 18. Defendants deny each and every allegation contained in the Complaint not
10 specifically admitted to be true herein.

11 19. Defendants deny that the EEOC or the individuals it purports to represent are
12 entitled to any of the relief listed in the Prayer for Relief, paragraphs A through F.

13 **FIRST AFFIRMATIVE DEFENSE**

14 20. EEOC's Complaint fails to state a claim upon which relief may be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 21. EEOC's claims, in whole or in part, are barred by applicable statutes of
17 limitations.

18 **THIRD AFFIRMATIVE DEFENSE**

19 22. This action is not maintainable as a class action under Fed. R. Civ. P. Rule 23.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 23. EEOC is estopped by its own actions and conduct, and/or the actions and conduct
22 of some or all of the individuals it purports to represent, from asserting any cause of action
23 against Defendants.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 24. EEOC and/or the individuals it purports to represent, has engaged in conduct and
26 activities sufficient to constitute a waiver of any right to assert the claims upon which they now
27 seek relief.

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SIXTH AFFIRMATIVE DEFENSE

25. Some or all of the EEOC's causes of action are barred by their failure timely to exhaust administrative remedies with respect to each Defendant.

SEVENTH AFFIRMATIVE DEFENSE

26. All of Defendants' employment actions were taken for legitimate, non-discriminatory reasons.

EIGHTH AFFIRMATIVE DEFENSE

27. Defendants' policies and practices are job-related and consistent with business necessity.

NINTH AFFIRMATIVE DEFENSE

28. The individuals whom EEOC purports to represent have failed to mitigate their damages, if any.

TENTH AFFIRMATIVE DEFENSE

29. To the extent the EEOC seeks punitive or exemplary damages, they are barred or limited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *See State Farm Mutual Automobile Insurance Co. v. Campbell*, -- U.S. --, 123 S. Ct. 1513 (2003).

ELEVENTH AFFIRMATIVE DEFENSE

30. This Court lacks personal jurisdiction over some or all Defendants.

TWELFTH AFFIRMATIVE DEFENSE

31. Some or all of EEOC's claims fail because the EEOC and the individuals it purports to represent have an adequate remedy at law.

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1 WHEREFORE, Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC,
2 A&F Ohio, Inc., and Abercrombie & Fitch Management Co. respectfully request that the EEOC's
3 Complaint be dismissed with prejudice in its entirety with all costs assessed against EEOC, and
4 that the Court grant such further relief as it deems just and proper at law or in equity.

5 DATED: November 11, 2004.

Respectfully submitted,

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7 /S/

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