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18 Attorneys for Plaintiff-Intervenor  
19 UMME-HANI KHAN

20 **IN THE UNITED STATES DISTRICT COURT**  
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

22 U.S. EQUAL EMPLOYMENT  
23 OPPORTUNITY COMMISSION,

24 Plaintiff,

25 and

26 UMME-HANI KHAN,

27 Plaintiff-Intervenor,

28 v.

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

32 Defendants.

Case No.

**[PROPOSED]**  
**COMPLAINT IN INTERVENTION**  
**FOR DAMAGES AND INJUNCTIVE**  
**AND DECLARATORY RELIEF FOR**  
**EMPLOYMENT DISCRIMINATION**

**DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. This action is brought by Plaintiff-Intervenor Khan to secure redress for  
3 Defendants' violation of her civil right to be free from employment discrimination on the basis  
4 of her religion and her religious practices.

5 2. In accordance with her religious beliefs and as a part of the exercise of her  
6 religion, Ms. Khan wears a hijab in public and when she is in the presence of men who are not  
7 members of her immediate family.

8 3. After working for Defendants for over four months, Plaintiff-Intervenor Umme-  
9 Hani Khan, an observant Muslim, was unlawfully suspended and subsequently terminated for  
10 refusing, as a condition of her employment, to remove her hijab, a headscarf covering her hair,  
11 ears, neck, and part of her chest.

12 4. Defendants unlawfully failed to accommodate Plaintiff-Intervenor Khan's  
13 sincerely held religious beliefs.

14 **JURISDICTION**

15 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that  
16 this case arises under federal law, specifically, Title VII of the Civil Rights Act of 1964, 42  
17 U.S.C. § 2000e, *et seq.*

18 6. This Court has supplemental jurisdiction over the related state law claims  
19 pursuant to 28 U.S.C. § 1367(a) because Plaintiff-Intervenor's claims under the California Fair  
20 Employment and Housing Act ("FEHA") form part of the same case or controversy under  
21 Article III of the United States Constitution. Plaintiff-Intervenor's state law claims share all  
22 common operative facts with her federal law claim, and the parties are identical. Resolving all  
23 state and federal claims in a single action serves the interests of judicial economy, convenience,  
24 and fairness to the parties.

25 **VENUE**

26 7. Venue is proper in the Northern District of California pursuant to Section  
27 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3), because the unlawful employment  
28

1 discrimination giving rise to Plaintiff-Intervenor’s claims occurred in this District.

2 **PARTIES**

3 8. Plaintiff-Intervenor UMME-HANI KHAN is a 20 year-old college student from  
4 Foster City, California. She is a practicing Muslim and is and has been an adherent of Islam  
5 since birth. In accordance with her religious beliefs and as a part of the exercise of her religion,  
6 Plaintiff-Intervenor Khan wears a headscarf covering her hair, ears, neck, and part of her chest  
7 when she is in public and when she is in the presence of men who are not members of her  
8 immediate family. She was employed by Abercrombie & Fitch Co. at a Hollister Co. store  
9 located in San Mateo, California from October 5, 2009 to February 22, 2010.

10 9. Defendant ABERCROMBIE & FITCH STORES INC. d/b/a HOLLISTER CO.  
11 (“A&F”) is a limited liability corporation that operates stores and websites selling casual  
12 sportswear apparel under the Abercrombie & Fitch, abercrombie, and Hollister Co. brands.  
13 While each brand targets a different age-range of consumers, all three of the brands are  
14 managed by A&F. A&F employs more than 500 people nationwide, is headquartered in New  
15 Albany, Ohio, and is doing business in the State of California and the City of San Mateo.

16 10. Defendant HOLLISTER CO. CALIFORNIA, LLC (“Hollister”) is a California  
17 limited liability corporation doing business in the State of California and the City of San Mateo  
18 and has continuously had at least fifteen employees.

19 11. All of the acts and failures to act alleged herein were duly performed by and  
20 attributable to all Defendants, each acting as a successor, agent, alter ego, employee, indirect  
21 employer, joint employer, integrated enterprise and/or under the direction and control of the  
22 others, except as specifically alleged otherwise. Said acts and failures to act were within the  
23 scope of such agency and/or employment, and each Defendant participated in, approved and/or  
24 ratified the unlawful acts and omissions by the other Defendants complained of herein.  
25 Whenever and wherever reference is made in this Complaint to any act by a Defendant or  
26 Defendants, such allegations and reference shall also be deemed to mean the acts and failures to  
27 act of each Defendant acting individually, jointly, and/or severally.

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 12. Plaintiff-Intervenor Khan has exhausted her administrative remedies. She filed  
3 timely administrative charges of discrimination against Hollister with the U.S. Equal  
4 Employment Opportunity Commission (EEOC) and the California Department of Fair  
5 Employment and Housing (DFEH).

6 13. The EEOC issued a letter of determination on September 24, 2010. Though the  
7 parties attempted conciliation, conciliation failed on January 28, 2011.

8 **STATEMENT OF THE FACTS**

9 14. Plaintiff-Intervenor Khan applied for and interviewed for a job at the Hollister  
10 Co. store in the Hillsdale Mall in San Mateo, California in October 2009. During that  
11 interview, in which she wore a hijab, Plaintiff-Intervenor Khan was asked if she could wear a  
12 hijab while at work that comported with A&F's "Look Policy," specifically, Hollister Co.'s  
13 colors and Plaintiff-Intervenor Khan responded that she could.

14 15. Defendants thereupon hired Plaintiff-Intervenor Khan as a stockroom employee.  
15 Although she primarily worked in the stockroom as an "impact associate," Plaintiff-Intervenor  
16 Khan was occasionally required to go out onto the sales floor to replenish clothing. Plaintiff-  
17 Intervenor Khan worked at Hollister Co. for over four months, performing her duties  
18 satisfactorily and with no problems or complaints.

19 16. On or about February 9, 2010, Adam Chmielewski ("Chmielewski"), a visiting  
20 district manager, saw Plaintiff-Intervenor Khan on the sales floor.

21 17. On or about February 15, 2010, Chmielewski asked Plaintiff-Intervenor Khan to  
22 speak on the phone with A&F's director of human resources, Amy Yoakum ("Yoakum").  
23 Yoakum told Plaintiff-Intervenor Khan that her hijab violated the company's "Look Policy"  
24 and asked Plaintiff-Intervenor Khan if she could remove her hijab while working. Plaintiff-  
25 Intervenor Khan explained that she could not do so because she wore her hijab in accordance  
26 with her religious beliefs. Yoakum thereupon suspended Plaintiff-Intervenor Khan from  
27 working until further notice.



1 **FIRST CLAIM FOR RELIEF**

2 *Unlawful Discrimination and Discharge on the Basis of Religion in Violation of Title VII*

3 24. Plaintiff-Intervenor Khan repeats and realleges the allegations set forth in  
4 Paragraphs 1 through 23 as though fully set forth herein.

5 25. Defendants' conduct as herein alleged violated Title VII of the Civil Rights Act  
6 of 1964, 42 U.S.C. § 2000e-2(a)(1), which makes unlawful discrimination against employees  
7 on the basis of religion. The term "religion" includes "all aspects of religious observance and  
8 practice, as well as belief." 42 U.S.C. § 2000e(j).

9 26. Defendants discriminated against Plaintiff-Intervenor Khan in violation of Title  
10 VII when it suspended and subsequently terminated her because she wears a hijab and would  
11 not remove her hijab.

12 27. As a proximate result of Defendants' discriminatory actions, Plaintiff-Intervenor  
13 Khan has suffered losses in compensation, earning capacity, humiliation, mental anguish, and  
14 emotional distress. As a result of those actions and consequent harms, Plaintiff-Intervenor  
15 Khan has suffered such damages in an amount to be proved at trial.

16 28. Defendants' unlawful actions were intentional, willful, malicious and/or done  
17 with reckless disregard for Plaintiff-Intervenor Khan's rights.

18 29. Plaintiff-Intervenor Khan requests relief as described in the Prayer for Relief  
19 below.

20 **SECOND CLAIM FOR RELIEF**

21 *Unlawful Failure to Accommodate Religious Beliefs in Violation of Title VII*

22 30. Plaintiff-Intervenor Khan repeats and realleges the allegations set forth in  
23 Paragraphs 1 through 29 as though fully set forth herein.

24 31. Defendants' conduct as herein alleged violated Title VII of the Civil Rights Act  
25 of 1964, 42 U.S.C. § 2000e(j), which requires an employer to "accommodate" religious  
26 practices and beliefs.

27 32. Defendants acted in violation of Title VII when, rather than initiating steps  
28

1 toward accommodating her religious practice, Defendants suspended and subsequently fired  
2 Plaintiff-Intervenor Khan because she wears a hijab and would not remove her hijab.

3 33. Accommodating Plaintiff-Intervenor Khan’s religious practice would not have  
4 caused Defendants an undue hardship.

5 34. As a proximate result of Defendants’ discriminatory actions, Plaintiff-Intervenor  
6 Khan has suffered losses in compensation, earning capacity, humiliation, mental anguish, and  
7 emotional distress. As a result of such actions and consequent harms, Plaintiff-Intervenor Khan  
8 has suffered such damages in an amount to be proved at trial.

9 35. Defendants’ unlawful actions were intentional, willful, malicious and/or done  
10 with reckless disregard for Plaintiff-Intervenor Khan’s rights.

11 36. Plaintiff-Intervenor Khan requests relief as described in the Prayer for Relief  
12 below.

13 **THIRD CLAIM FOR RELIEF**

14 *Unlawful Discrimination and Discharge on the Basis of Religion in Violation of*  
15 *the California Fair Employment and Housing Act*

16 37. Plaintiff-Intervenor Khan repeats and realleges the allegations set forth in  
17 paragraphs 1 through 36 as though fully set forth herein.

18 38. Defendants’ conduct as herein alleged violated the California Fair Employment  
19 and Housing Act, which makes it an unlawful employment practice for an employer to  
20 discharge or discriminate against an employee in the terms, conditions, and privileges of  
21 employment because of her religion. Cal. Gov’t Code § 12940.

22 39. Defendants discriminated against Plaintiff-Intervenor Khan in violation of  
23 FEHA when Defendants suspended and subsequently fired Plaintiff-Intervenor Khan because  
24 she wears a hijab and would not remove her hijab.

25 40. As a proximate result of Defendants’ discriminatory actions, Plaintiff-Intervenor  
26 Khan has suffered losses in compensation, earning capacity, humiliation, mental anguish, and  
27 emotional distress. As a result of such actions and consequent harms, Plaintiff-Intervenor Khan  
28 has suffered such damages in an amount to be proved at trial.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff-Intervenor Khan requests that this Court:

3 1. Enter a declaratory judgment that the practices complained of in this complaint  
4 are unlawful and violate Title VII of the Civil Rights Act of 1964 and the California Fair  
5 Employment and Housing Act;

6 2. Grant all injunctive relief necessary to bring Defendants into compliance with  
7 the aforementioned laws;

8 3. Order Defendants to pay the wages, salary, employment benefits, and other  
9 compensation denied or lost to Plaintiff-Intervenor Khan to date by reason of Defendants'  
10 unlawful actions, in amounts to be proven at trial;

11 4. Order Defendants to pay compensatory damages for Plaintiff-Intervenor Khan's  
12 emotional pain and suffering, in an amount to be proven at trial;

13 5. Order Defendants to pay exemplary and punitive damages;

14 6. Order Defendants to pay attorneys' fees and costs of the action;

15 7. Order Defendants to pay interest at the legal rate on such damages as  
16 appropriate, including pre- and post-judgment interest; and

17 8. Grant any further relief that the Court deems just and proper.

18  
19 Dated: June 27, 2011

Respectfully submitted,

20 Zahra Billoo  
21 COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS (CAIR)

22 Christopher Ho  
23 Araceli Martínez-Olguín  
24 The LEGAL AID SOCIETY –  
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26 By: \_\_\_\_\_

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**JURY TRIAL DEMAND**

Plaintiff-Intervenor hereby demands a jury trial on all issues so triable.

Dated: June 27, 2011

Respectfully submitted,

Zahra Billoo  
COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS (CAIR)

Christopher Ho  
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