

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.09-cv-02757-WYD-KMT

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,  
ANITA HANSEN, and  
JULIE FARRAR,

Plaintiffs, on behalf of themselves and all others similarly situated,

v.

ABERCROMBIE & FITCH CO.,  
ABERCROMBIE & FITCH STORES, INC, and  
J.M. HOLLISTER LLC, d/b/a HOLLISTER CO.

Defendants.

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**FIFTH AMENDED AND CLASS ACTION COMPLAINT**

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Plaintiffs, Colorado Cross-Disability Coalition, Anita Hansen, and Julie Farrar, by and through undersigned counsel, hereby submit this Fifth Amended and Class Action Complaint, for violations of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.*

**INTRODUCTION**

1. Almost twenty years after the passage of the ADA, Abercrombie & Fitch Co., Abercrombie & Fitch Stores, Inc, J.M. Hollister LLC, d/b/a Hollister Co. (“Defendants”), all related companies and expanding clothing retailers with stores throughout the United States and beyond, discriminate against individuals who use wheelchairs for mobility. Defendants design, construct and operate stores that provide separate, segregated and unequal access and services to

customers who use wheelchairs.

2. The federal ADA was enacted in 1990, “[t]o establish a clear and comprehensive prohibition of discrimination on the basis of disability.” The ADA prohibits public accommodations, like the stores Defendants own and operate, from providing individuals who use wheelchairs with separate or unequal benefits and services.

3. According to Abercrombie & Fitch Co.’s March 2009 form 10-K submitted to the federal Securities and Exchange Commission and available on its website:

The Company’s in-store marketing is designed to convey the principal elements and personality of each brand. The store design, furniture, fixtures and music are carefully planned and coordinated to create a shopping experience that reflects the Abercrombie & Fitch, abercrombie . . . [or] Hollister . . . lifestyle.  
...

Every brand displays merchandise uniformly to ensure a consistent store experience, regardless of location. Store managers receive detailed plans designating fixture and merchandise placement to ensure coordinated execution of the Company-wide merchandising strategy.

4. That “store experience” and “lifestyle” exclude people who use wheelchairs. Defendants’ “coordinated” store layouts are not accessible to individuals who use wheelchairs.

5. Defendants created and designed all Hollister Co. stores, one of Defendants’ store brands, after the passage of and the effective date of the ADA. In newly designed and constructed stores or those that have been altered after the passage of the ADA, such stores must be “readily accessible to and usable by” individuals who use wheelchairs. Hollister Co. stores throughout the United States are not accessible to individuals who use wheelchairs.

6. Defendants discriminate against customers who use wheelchairs by designing and constructing stairs at Hollister Co. stores’ main entrances throughout the United States and

forcing individuals who use wheelchairs to enter at a different, separate and segregated location.

7. Anita Hansen and Julie Farrar (“Individual Plaintiffs”) both use wheelchairs, and Colorado Cross-Disability Coalition (“CCDC”) is a disability rights advocacy organization that advocates for individuals who use wheelchairs. Each Individual Plaintiff is a member of CCDC. CCDC and the Individual Plaintiffs have been harmed by Defendants’ discrimination and seek a court order directing Defendants to comply with the ADA and to pay Plaintiffs’ reasonable attorneys’ fees and costs.

8. Plaintiffs seek to send a clear message that segregated services and inaccessible public accommodations are no longer permitted under the law and can no longer be tolerated.

9. Because Defendants’ Hollister Co. stores are designed and constructed uniformly with respect to elevated entrance designs in ways that violate the ADA, Plaintiffs seek to certify a class action pursuant to Fed. R. Civ. P. 23.

### **JURISDICTION**

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

11. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

### **PARTIES**

12. Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

13. Anita Hansen is substantially limited in the major life activity of walking and uses a motorized wheelchair for mobility. Anita Hansen is a CCDC member.

14. Julie Farrar is substantially limited in the major life activity of walking and uses a manual wheelchair for mobility. Julie Farrar is a CCDC member

15. Defendant Abercrombie & Fitch Co. (“A&F Co.”) is a corporation, incorporated in Delaware in 1996. A&F Co. is a retailer that operates stores throughout the United States and websites selling casual sportswear apparel under Abercrombie & Fitch, abercrombie, Hollister and other brands. A&F Co.’s principal place of business located at 6301 Fitch Path, New Albany, OH 43054. On information and belief, A&F Co. is the parent company for the other defendants in this case, and each of these defendants operates stores throughout the United States.

16. Defendant Abercrombie & Fitch Stores, Inc. (“A&F Stores”) is a subsidiary of A&F Co. A&F Stores operates clothing stores throughout the United States. A&F Stores operates stores under the names “Abercrombie & Fitch” and “abercrombie.” A&F Stores is a corporation, with its principal place of business located at 6301 Fitch Path, New Albany, OH 43054. A&F Stores is the parent company for J.M. Hollister LLC, d/b/a Hollister Co. (“Hollister”).

17. J.M. Hollister LLC, d/b/a Hollister Co. (“Hollister”) is a subsidiary of A&F Stores. Hollister operates clothing stores throughout the United States, including in Colorado. The stores in Colorado operate under the name “Hollister Co.” Hollister is a limited liability company, with its principal place of business located at 6301 Fitch Path, New Albany, OH 43054. Hollister operates stores throughout the United States.

**CLASS ACTION ALLEGATIONS**

18. Defendants have discriminated against and continue to discriminate against customers who use wheelchairs as more fully set forth in this Complaint.

19. Defendants own and operate Hollister Co. stores throughout the United States that discriminate against individuals who use wheelchairs in violation of the ADA and in Colorado that violate the CADA.

20. Defendants have designed and constructed porch-like entrances at their Hollister Co. stores throughout the United States. Many if not most of these entrances include steps from the exterior to the porch, and from the porch to the interior of the store. These elevated Porch Entrances (“Elevated Entrances”) are not accessible to individuals who use wheelchairs.

21. The Elevated Entrances in Hollister Co. stores throughout the United States are designed to be the main public entrance to those stores.

22. In Hollister Co. stores throughout the United States that have Elevated Entrances, Defendants have designed and constructed a separate segregated entrance for individuals who use wheelchairs.

23. The separate segregated Elevated Entrances at Hollister Co. stores throughout the United States are not readily accessible to and usable by individuals who use wheelchairs.

24. The separate segregated Elevated Entrances at Hollister Co. stores throughout the United States do not provide individuals who use wheelchairs with the full and equal enjoyment of Hollister Co. stores’ goods, services, facilities, accommodations and privileges.

25. All of Hollister’s stores were designed and constructed after January 26, 1993.

26. Hollister Co. stores throughout the United States that have Elevated Entrances do

not provide signage at the entrance directing individuals who use wheelchairs to the separate segregated entrances.

27. In Hollister's stores with Elevated Entrances, customers who use wheelchairs must seek out and find a door opening mechanism that is not located at the main public entrance.

28. On information and belief, Defendants intend to continue designing and constructing stores with Elevated Entrances used by the general public.

29. Within two years prior to the filing of the original Complaint, each of the Individual Plaintiffs has experienced some or all of the accessibility barriers described in this Fifth Amended and Class Action Complaint at Defendants' Hollister Co. stores.

30. On information and belief, class members have experienced the same barriers to full accessibility that the Individual Plaintiffs and CCDC members who use wheelchairs have experienced exist in Defendants' stores throughout the United States.

31. Defendants have been involved in lawsuits before the instant case regarding claims of ADA violations and a lack of accessibility for individuals who use wheelchairs.

32. Defendants maintain and/or engage in policies, practices and procedures that violate the ADA.

33. Class members have been damaged by Defendants' failure to comply with the ADA.

34. Plaintiff Hansen, Plaintiff Farrar and Colorado Cross-Disability Coalition ("Proposed Class Representatives") seek to maintain this action as a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to the question whether the

Elevated Entrances at Hollister Stores nationwide violate Title III of the ADA.

35. The class consists of all people with disabilities who use wheelchairs for mobility who, during the two years prior to the filing of the Complaint (ECF # 1, filed November 24, 2009) in this case, were denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any Hollister Co. store in the United States on the basis of disability because of the presence of an Elevated Entrance.

36. The class identified is believed to consist of hundreds of members, and joinder of all such class members in this lawsuit is impracticable.

37. The question of the compliance of the Elevated Entrances with Title III of the ADA is common to the class.

38. The claims of the Proposed Class Representatives are typical of the claims of the class. The Individual Plaintiffs -- like all other members of the class -- each use a wheelchair for mobility and claim that Defendants have violated the ADA by constructing stores with Elevated Entrances after the effective date of the ADA.

39. The Proposed Class Representatives will fairly and adequately protect the interests of the class because they have retained counsel with extensive experience in litigation, including class action litigation.

40. The Proposed Class Representatives have no interests that conflict in any way with those of the class.

41. This action may be maintained pursuant to Rule 23(b)(2), because Defendants' actions in constructing Elevated Entrances at Hollister stores are actions that apply generally to

the class. Injunctive or declaratory relief, therefore, is appropriate respecting the class as a whole.

### **INDIVIDUAL ALLEGATIONS**

42. Plaintiffs reallege and reincorporate by reference all other allegations in this Complaint herein.

43. Plaintiff Anita Hansen has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. As set forth below, Plaintiff Hansen will go to Defendants' stores if Defendants remedy the ADA violations identified in this complaint.

44. Plaintiff Hansen visits malls and other retail shopping complexes, including malls and shopping complexes in which Defendants maintain Hollister Co. stores approximately six to eight times per year in order to shop for merchandise for herself, her friends and relatives.

45. Plaintiff Hansen visited Defendants' Hollister store, located in the Orchard Towne Center at 14697 Delaware Street, Westminster, Colorado, on July 30, 2010, and experienced the accessibility barriers identified in this Fourth Amended and Class Action Complaint.

46. When Plaintiff Hansen arrived at the Orchard Towne Center Hollister store, she did not see a way to access the store right away because there are steps at the front entrance. The steps led to a platform with chairs and items displayed on it and appeared to be the only entrance to the store.

47. Because Plaintiff Hansen uses a wheelchair, the steps prohibited Plaintiff Hansen from accessing the store.



48. There was no sign at the entrance where the steps are that directed Plaintiff Hansen to an accessible entrance.

49. Eventually, Plaintiff Hansen did find what looked like shutters with a small button next to them. This button was located to the left of the main entrance approximately ten feet and was difficult to see.

50. When Plaintiff Hansen approached the button and pressed it, a door (which looks like shutters) was locked.

51. Someone outside the store who did not appear to be an employee asked Plaintiff Hansen if she needed to get in the store. Plaintiff Hansen told him, "Yes."

52. The entrance to the store was very narrow, but Plaintiff Hansen was able to enter.

53. Plaintiff Hansen entered on the young women's side of the store.

54. Looking at the entrance from inside the store, Plaintiff Hansen observed steps coming down from the entrance platform into the young women's section.

55. The only way to get to the young men's side of the store was to go all the way into the store and cross over. She had to ask employees to move tables, chairs, and other heavy objects so Plaintiff Hansen could have a clear path for her wheelchair.

56. This store was one of the most difficult stores Plaintiff Hansen had been in with respect to accessibility.

57. Non-disabled customers could access either side of the store from the elevated entrance with stairs.

58. Plaintiff Hansen was frustrated and humiliated throughout this shopping

experience by the lack of accessibility.

59. Plaintiff Hansen went to the Hollister store at Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado on August 19, 2009, and experienced accessibility barriers identified in this Complaint.

60. Plaintiff Hansen went to this store to return the shirts she had purchased previously at the Orchard Towne Center Hollister store.

61. This store design and layout were similar to the store in the Orchard Towne Center.

62. The front entrance to this store had steps blocking access for Plaintiff Hansen.

63. There was no sign at the front entrance directing a person in a wheelchair how to access the store.

64. Off to the right of the entrance porch, there was a small, hard-to-see button next to what looked like shutters.

65. Plaintiff Hansen pressed the button, and the door opened automatically in the direction of her wheelchair.

66. Plaintiff Hansen had to back up quickly in her wheelchair to avoid being hit by the opening door.

67. The entrance was very narrow and difficult to get through in Plaintiff Hansen's wheelchair.

68. Plaintiff Hansen entered into the young men's side of the store.

69. Steps that led from the entrance porch to the young women's side of the store

made it impossible for Plaintiff Hansen to access that side of the store in her wheelchair.

70. As soon as Plaintiff Hansen entered the store, there was a table of merchandise that blocked her entrance.

71. No employee offered to help move the table, so Plaintiff Hansen had to get past the table by pushing it out of the way with her motorized wheelchair.

72. In March of 2010, while shopping, Plaintiff Hansen went to the Hollister store in the Parkdale Mall, located at 6155 Eastex Freeway, Beaumont, Texas 77706.

73. Because of the barriers to accessibility, Plaintiff Hansen had experienced earlier at the two previous Hollister stores, she was deterred from entering the store.

74. Plaintiff Hansen will shop at Defendants' Hollister stores, including the ones she shopped at or attempted to shop at, if Defendants remedy the inaccessibility. Plaintiff Hansen will visit Defendants' other Hollister stores in the Denver metropolitan area and elsewhere when she travels if Defendants make their stores accessible.

75. Plaintiff Hansen will return to the stores she has previously visited periodically to test whether accessibility barriers still exist.

76. Until the accessibility barriers are remedied, other than visiting Hollister stores to test accessibility, Plaintiff Hansen is and will continue to be deterred and discouraged from going to Defendants' Hollister stores.

77. Plaintiff Julie Farrar has visited Defendants' Hollister Co. stores and experienced the accessibility barriers identified in this Complaint.

78. Plaintiff Farrar visits malls and other retail shopping complexes, including malls

and shopping complexes in which Defendants maintain Hollister stores, approximately twenty times per year in order to shop for merchandise for himself, friends and relatives.

79. Plaintiff Farrar has visited Defendants' Hollister store, located within the Orchard Towne Center, 14697 Delaware Street, Westminster, Colorado, with her daughter on numerous occasions, and encountered the Elevated Entrance.

80. Neither Plaintiff Farrar nor her daughter noticed an accessible entrance to the Hollister store.

81. Believing that she would not be able to enter Defendants' Hollister store, Plaintiff Farrar and her daughter were deterred from entering the store, and moved on to another store.

82. Plaintiff Farrar has also visited Defendants' Hollister Store, located within the Park Meadows Mall, 8401 South Park Meadows Center Drive, Lone Tree, Colorado, with her daughter on numerous occasions, and encountered the Elevated Entrance.

83. Neither Plaintiff Farrar nor her daughter noticed an accessible entrance to the Hollister store.

84. Believing that she would not be able to enter Defendants' Hollister store, Plaintiff Farrar and her daughter were deterred from entering the store, and moved on to another store.

85. Plaintiff Farrar intends to shop and will shop at Defendants' Hollister stores, including the stores located in the Orchard Towne Center and Park Meadows Mall, if Defendants remedy the barriers she encountered and others like them.

86. Plaintiff Farrar intends to and will visit Defendants' other Hollister stores in the Denver metropolitan area and elsewhere when she travels if Defendants remedy the accessibility

barriers similar to those she experienced.

87. Plaintiff Farrar intends to and will return to the Hollister store she visited to test whether the accessibility barriers have been remedied.

88. Other than to determine if Hollister stores are accessible, Plaintiff Farrar is and continues to be deterred and discouraged from going to Defendants' Hollister stores.

89. Plaintiff Farrar was humiliated and frustrated by her experience trying to enter Defendants' Hollister stores.

90. Plaintiff Farrar would like to and will access Defendants' stores in the future if Defendants remedy the ADA violations identified in this Complaint.

91. Plaintiff CCDC is a membership organization having members who use wheelchairs.

92. As a result of Defendants' failures to make their stores accessible, CCDC has investigated and is investigating complaints by individuals who use wheelchairs about accessibility at Defendants' stores.

93. CCDC has filed two prior lawsuits against Defendant A&F Stores regarding wheelchair accessibility in two specific Abercrombie & Fitch Colorado stores, owned and operated by A&F Stores. These cases were resolved.

94. CCDC has members who use wheelchairs who have experienced and/or are likely to experience barriers to accessibility at Defendants' stores.

95. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of

that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- the goods, services, facilities, privileges, advantages, or accommodations provided by places of public accommodation.

96. As set forth in this Complaint, Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities.

97. CCDC's members and their spouses, friends, relatives, and associates have been harmed and will continue to be harmed by Defendants' discrimination.

98. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into all aspects of community life are at the core of CCDC's organizational purpose.

99. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

#### **CLAIM FOR RELIEF**

(On behalf of CCDC, the Class Representatives, and all others similarly situated for violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*)

100. Plaintiffs reallege and reincorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

101. Defendant A&F Stores owns and operates Hollister Co. stores throughout the United States.

102. A&F Co. is the parent company of A&F Stores.

103. A&F Stores is the owner of the subsidiary Hollister.

104. A&F Stores' Hollister Co. stores are places of public accommodation under 42 U.S.C. § 12181(7)(E).

105. All Hollister Co. stores were designed and constructed after the effective date of the ADA.

106. All Hollister Co. were required to be designed and constructed so that they are readily accessible to and usable by individuals who use wheelchairs. 42 U.S.C. § 12183(a)(1).

107. The Elevated Entrances at Hollister Co. stores were not designed and constructed to be readily accessible to and usable by individuals who use wheelchairs.

108. All Hollister Co. stores were required to be designed and constructed to comply with the Department of Justice's Standards for Accessible Design ("Standards"). 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.406; 28 C.F.R., pt. 36, app A.

109. The Elevated Entrances at Defendants' Hollister stores do not comply with the Standards.

110. Defendants are required to provide individuals who use wheelchairs full and equal enjoyment of their stores. 42 U.S.C. § 12182(a).

111. Defendants have failed and continue to fail to provide individuals who use wheelchairs the full and equal enjoyment of their Hollister Co. stores in the United States.

112. Defendants unlawfully discriminated against individuals who use wheelchairs and will continue to discriminate against individuals who use wheelchairs unless this Court orders an injunction prohibiting such discrimination.

113. Plaintiffs were harmed by Defendants' discrimination and will continue to be

harmed by Defendants' discrimination unless this Court orders them to comply.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. that this Court certify the class identified in paragraph 36 pursuant to Rule 23 of the Federal Rules of Civil Procedure;
3. that this Court issue an injunction ordering Defendants to comply with the ADA with respect to all Hollister Co. stores nationwide by ramping or removing the Elevated Entrances or otherwise making the Porch Entrances accessible;
4. that this Court award reasonable attorneys' fees and costs; and
5. that this Court award such additional or alternative relief as may be just, proper and equitable.

**JURY DEMAND:** Plaintiffs seek a trial to the Court.



Dated: October 21, 2010

Respectfully submitted,

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