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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 EDUARDO GONZALEZ, ANTHONY  
14 OCAMPO, ENCARNACION GUTIERREZ,  
15 JOHAN MONTOYA, JUANCARLOS GÓMEZ-  
16 MONTEJANO, JENNIFER LU, AUSTIN CHU,  
17 IVY NGUYEN, ANGELINE WU, ERIC FIGHT,  
18 CARLA GRUBB, DAVID CULPEPPER,  
19 PATRICE DOUGLASS, and ROBAIR  
20 SHERROD, BRANDY HAWK and ANDRE  
21 STEELE, on behalf of themselves and all others  
22 similarly situated,

19 Plaintiffs,

20 v.

21 ABERCROMBIE & FITCH STORES, INC., A&F  
22 CALIFORNIA, LLC, A&F OHIO, INC., and  
23 ABERCROMBIE & FITCH MANAGEMENT  
24 CO.,

24 Defendants.

Case Nos. 03-2817 SI, 04-4730 and  
04-4731

**NOTICE OF FILING AND  
PLAINTIFF EEOC'S RESPONSE  
TO OBJECTOR POTTER'S  
LETTER OF APRIL 12, 2005**

Hearing Date: April 14, 2005  
Hearing Time: 4:00 p.m.

Courtroom of Hon. Susan Illston

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26 [Continued on next page]  
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28

1 ELIZABETH WEST and JENNIFER LU,  
 2  
 3 Plaintiffs,  
 4  
 5 v.  
 6 ABERCROMBIE & FITCH STORES, INC., A&F  
 7 CALIFORNIA, LLC, A&F OHIO, INC., and  
 8 ABERCROMBIE & FITCH MANAGEMENT  
 9 CO.,  
 10  
 11 Defendants.

12 EQUAL EMPLOYMENT OPPORTUNITY  
 13 COMMISSION,  
 14  
 15 v.  
 16 ABERCROMBIE & FITCH STORES, INC., A&F  
 17 CALIFORNIA, LLC, A&F OHIO, INC., and  
 18 ABERCROMBIE & FITCH MANAGEMENT  
 19 CO.  
 20  
 21 Defendants.

22 **NOTICE OF FILING AND EEOC'S RESPONSE TO OBJECTOR POTTER'S**  
 23 **LETTER OF APRIL 12, 2005**

24 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

25 **NOTICE IS HEREBY GIVEN** that on April 14, 2005, the Equal Employment  
 26 Opportunity Commission filed with the Clerk of the Court Plaintiff EEOC's Response to  
 27 Objector Potter's Letter of April 12, 2005.

28 **EEOC's Response to Objector Potter's Letter**

Rachel Potter has filed an Objection to the Court's Approval of the Consent Decree. On  
 April 12, 2005 Potter filed a letter reiterating the objections and seeking discovery. The EEOC  
 hereby adopts the Response of Class Counsel filed on April 12, 2005. In addition, the EEOC will  
 briefly address below the concerns raised by Ms. Potter regarding EEOC's commitment to fulfill  
 its obligation to monitor the Defendants' compliance with the terms of the Consent Decree.

First, EEOC is fully committed to monitoring Defendants' compliance with this Consent  
 Decree, including, if necessary, filing appropriate actions with this Court. The decision whether

1 to pursue such an action(s) will not be motivated by the issue of attorneys' fees. Generally under  
2 Title VII, the EEOC does not and cannot recover fees for actions it brings. 42 U.S.C. § 2000e-  
3 5(k).

4 Second, Ms. Potter's assertion that the dispute resolution procedures will be futile because  
5 it will "completely reduce the incentive for EEOC to pursue complaints because it will never  
6 recoup its costs and fees for an otherwise very valid challenge" is simply wrong. The EEOC  
7 resisted the prevailing party language and insisted that each party pay its own fees resulting from  
8 any challenges. EEOC would much prefer to pay its own fees and costs and not run the risk of  
9 being assessed the fees and costs of defendants.<sup>1</sup>

10 Ms. Potter's objection appears to be based upon a misunderstanding about how the issue  
11 of attorneys' fees affects the EEOC. In light of the above explanation regarding the issue of  
12 attorneys' fees we ask that Ms. Potter withdraw this portion of her objection. Failing that, we  
13 respectfully request that the Court reject Ms. Potter's objection.

14  
15 April 14, 2005

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/s/ Gregory M. Gochanour  
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25 \_\_\_\_\_  
26 <sup>1</sup> While the EEOC is generally not able to seek recovery of its attorneys' fees, *see supra*, EEOC  
27 can, under Title VII, seek and recover attorneys' fees for discovery sanctions or in instances  
28 where the parties agree to a prevailing party standard (such as that suggested by Potter).  
However, any fees or costs recovered by the EEOC are paid directly to the U.S. Treasury and not  
into EEOC's budget. Whenever fees or costs are assessed against the EEOC, they are paid out of  
EEOC's budget, not the U.S. Treasury.