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

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

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

23 Plaintiffs,

24 v.

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

27 Defendants.
28

Case No. C03-2817 SI

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

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ANSWER TO FOURTH AMENDED COMPLAINT

NOW COME Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, A&F Ohio, Inc., and Abercrombie & Fitch Management Co. (collectively “Defendants”), by and through counsel, and for their Answer to the Fourth Amended Class Action Complaint (“Fourth Amended Complaint”) filed by Eduardo Gonzalez, Anthony Ocampo, Encarnacion Gutierrez, Johan Montoya, JuanCarlos Gómez-Montejano, Jennifer Lu, Austin Chu, Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, David Culpepper, Patrice Douglass, Robair Sherrod, Brandy Hawk, and Andre Steele (collectively “Plaintiffs”), hereby make the following admissions, denials, averments, and affirmative defenses:

1. For their response to paragraph 1 of Plaintiffs’ Fourth Amended Complaint, Defendants assert that A&F California, LLC operates retail clothing stores in California. Defendants state that A&F Ohio, Inc. operates retail clothing stores in Ohio. Defendants state that Abercrombie & Fitch Stores, Inc. operates retail clothing stores in some other states. Defendants state that Abercrombie & Fitch Management Co. does not operate any retail clothing stores. Defendants deny the remaining allegations contained in paragraph 1 of the Fourth Amended Complaint.
2. Defendants deny the allegations contained in paragraph 2 of the Fourth Amended Complaint.
3. Defendants deny the allegations contained in paragraph 3 of the Fourth Amended Complaint.
4. For their response to paragraph 4 of the Fourth Amended Complaint, Defendants state that Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc., maintain an Appearance/Look Policy, which has been revised from time to time. Defendants deny the remaining allegations contained in paragraph 4 of the Fourth Amended Complaint, including the allegation that the Appearance/Look Policy has any unlawfully discriminatory intent, effect, or is enforced in any unlawfully discriminatory manner.
5. Defendants deny the allegations contained in paragraph 5 of the Fourth Amended Complaint.

1 6. For their answer to paragraph 6 of the Fourth Amended Complaint, Defendants
2 state that, until 1999 but not currently, some of Abercrombie & Fitch Co.'s subsidiaries
3 published and distributed a "Look Book" which, among other things, explained the
4 Appearance/Look Policy. Defendants deny the remaining allegations contained in paragraph 6
5 of the Fourth Amended Complaint.

6 7. For their answer to paragraph 7 of the Fourth Amended Complaint, Defendants
7 state that some stores have sold A&F Quarterly, that some stores display A&F TV, and that
8 some stores have photographs of models wearing Abercrombie & Fitch clothing. Defendants
9 deny the remaining allegations contained in paragraph 7 of the Fourth Amended Complaint.

10 8. For their answer to paragraph 8 of the Fourth Amended Complaint, Defendants
11 state that regional and district managers occasionally make site visits to stores. Defendants deny
12 the remaining allegations contained in paragraph 8 of the Fourth Amended Complaint.

13 9. For their answer to paragraph 9 of the Fourth Amended Complaint, Defendants
14 state that some stores have sent pictures of brand representatives to headquarters. Defendants
15 deny the remaining allegations contained in paragraph 9 of the Fourth Amended Complaint.

16 10. For their answer to paragraph 10 of the Fourth Amended Complaint, Defendants
17 state that Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc., recruit
18 at various colleges across the United States. Defendants deny the remaining allegations
19 contained in paragraph 10 of the Fourth Amended Complaint.

20 11. Defendants deny the allegations contained in paragraph 11 of the Fourth Amended
21 Complaint.

22 12. Defendants deny the allegations contained in paragraph 12 of the Fourth Amended
23 Complaint.

24 13. For their answer to paragraph 13 of the Fourth Amended Complaint, Defendants
25 state that Plaintiffs purport to invoke jurisdiction pursuant to 28 U.S.C. ___1331 and 1343.

26 14. For their answer to paragraph 14 of the Fourth Amended Complaint, Defendants
27 state that Plaintiffs purport to invoke venue in this District pursuant to 28 U.S.C.

28 §1391(b). Defendants deny that class certification is appropriate. Defendants Abercrombie &

1 Fitch Stores, Inc., A&F Ohio, Inc., and Abercrombie & Fitch Management Co. deny that they
2 operate any retail stores in California. Defendants Abercrombie & Fitch Stores, Inc. and A&F
3 Ohio, Inc. deny that they employ anyone in California. Defendants deny the remaining
4 allegations contained in paragraph 14 of the Fourth Amended Complaint.

5 15. For their answer to paragraph 15 of the Fourth Amended Complaint, Defendants
6 state that Plaintiffs claim that intradistrict assignment is proper. Defendants deny the allegations
7 contained in paragraph 15 of the Fourth Amended Complaint.

8 16. Defendants are without information sufficient to form a belief as to the truth or
9 falsity of the minority status, residency, or student enrollment information of Mr. Gonzalez and
10 therefore deny the same. Defendants deny all other allegations in paragraph 16 of the Fourth
11 Amended Complaint and specifically deny that they discriminated against Mr. Gonzalez on
12 account of his race, color, and/or national origin.

13 17. Defendants are without information sufficient to form a belief as to the truth or
14 falsity of the minority status, residency or student enrollment information of Mr. Ocampo and
15 therefore deny the same. Defendants deny all other allegations in paragraph 17 of the Fourth
16 Amended Complaint and specifically deny that they discriminated against Mr. Ocampo on
17 account of his race, color, and/or national origin.

18 18. Defendants admit that Plaintiff Encarnacion Gutierrez applied for a position in the
19 Fourth Street Promenade Abercrombie & Fitch store in or around July 2001 and admit that Mr.
20 Gutierrez was not hired. Defendants are without information sufficient to form a belief as to the
21 truth or falsity of his minority status or residency information and therefore deny the same.
22 Defendants deny all other allegations in paragraph 18 of the Fourth Amended Complaint and
23 specifically deny that they discriminated against Mr. Gutierrez on account of his race, color,
24 and/or national origin.

25 19. Defendants admit that Plaintiff Johan Montoya applied for a position at the
26 Topanga Mall Abercrombie & Fitch store in or around August 2002 and admit Mr. Montoya
27 was not hired. Defendants are without information sufficient to form a belief as to the truth or
28 falsity of his minority status, residency and student enrollment information and therefore deny

1 the same. Defendants deny all other allegations in paragraph 19 of the Fourth Amended
2 Complaint and specifically deny that they discriminated against Mr. Montoya on account of his
3 race, color, and/or national origin.

4 20. Defendants admit that Plaintiff Juancarlos Gómez-Montejano was employed at the
5 Fourth Street Promenade Abercrombie & Fitch store beginning in November 1998, but deny that
6 he was employed until April 1999. Defendants deny that Mr. Gómez-Montejano was employed
7 as a Brand Representative. Defendants further assert that Mr. Gómez-Montejano applied and
8 was hired for a temporary position as an Overnight at the Century City Abercrombie & Fitch
9 store, where he worked for a short time. Defendants deny that they discriminated against Mr.
10 Gómez-Montejano on account of his race, color, and/or national origin. Defendants are without
11 information sufficient to form a belief as to the truth or falsity of the remaining allegations
12 contained in paragraph 20 of the Fourth Amended Complaint and therefore deny same.

13 21. Defendants admit that Plaintiff Jennifer Lu was employed as a Brand
14 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa,
15 California, but deny that she was employed from September 2000 through February 2003.
16 Defendants deny that Ms. Lu was terminated on account of her race, color, and/or national
17 origin. Defendants are without information sufficient to form a belief as to the truth or falsity of
18 the remaining allegations contained in paragraph 21 of the Fourth Amended Complaint and
19 therefore deny same.

20 22. Defendants admit that Plaintiff Austin Chu was employed as a Brand
21 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa,
22 California. Defendants deny that Mr. Chu was employed from June 2001 through March 2003.
23 Defendants deny that Mr. Chu was constructively discharged on account of his race, color,
24 and/or national origin. Defendants are without information sufficient to form a belief as to the
25 truth or falsity of the remaining allegations contained in paragraph 22 of the Fourth Amended
26 Complaint and therefore deny same.

27 23. Defendants admit that Plaintiff Ivy Nguyen was employed as a Brand
28 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa,

1 California. Defendants deny that Ms. Nguyen was terminated on account of her race, color,
2 national origin, and/or gender. Defendants are without information sufficient to form a belief as
3 to the truth or falsity of the remaining allegations contained in paragraph 23 of the Fourth
4 Amended Complaint and therefore deny same.

5 24. Defendants admit that Plaintiff Angeline Wu was employed as a Brand
6 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa,
7 California. Defendants deny that Ms. Wu was terminated on account of her race, color, national
8 origin, and/or gender. Defendants are without information sufficient to form a belief as to the
9 truth or falsity of the remaining allegations contained in paragraph 24 of the Fourth Amended
10 Complaint and therefore deny same.

11 25. Defendants state that Plaintiff Eric Fight was employed from June 3, 2003 to June
12 13, 2003. Defendants deny that Mr. Fight was constructively discharged. Defendants also deny
13 that they discriminate based on race or color. Defendants are without sufficient information to
14 form a belief as to the truth or falsity of the remaining allegations contained in paragraph 25 of
15 the Fourth Amended Complaint, and therefore deny the same.

16 26. Defendants state that Ms. Grubb was employed as a Brand Representative from
17 November 17, 2002 until December 31, 2002. Defendants are without sufficient information to
18 form a belief as to the truth or falsity of the minority status, residency or student enrollment
19 information of Ms. Grubb, and therefore deny the same. Defendants deny all other allegations
20 in paragraph 26 of the Fourth Amended Complaint and deny specifically that she was
21 constructively discharged on account of her race or color.

22 27. Defendants are without sufficient information to form a belief as to the truth or
23 falsity of the residency, student enrollment, or minority status of Mr. Culpepper, and therefore
24 deny the same. Defendants deny all other allegations in paragraph 27 of the Fourth Amended
25 Complaint, and deny specifically that he was denied positions due to his race or color.

26 28. Defendants are without sufficient information to form a belief as to the truth or
27 falsity of the residency, student enrollment, or minority status of Ms. Douglass. Defendants
28 deny all other allegations in paragraph 28 of the Fourth Amended Complaint, and deny

1 specifically that she was denied a position due to her race, color, or national origin.

2 29. Defendants are without sufficient information to form a belief as to the truth or
3 falsity of the residency, student enrollment, or minority status of Mr. Sherrod. Defendants deny
4 all other allegations in paragraph 29 of the Fourth Amended Complaint, and deny specifically
5 that he was denied a position due to his race, color, or national origin.

6 30. Defendants are without sufficient information to form a belief as to the truth or
7 falsity of the residency, student enrollment, or minority status of Ms. Hawk and therefore deny
8 same. Defendants admit that Ms. Hawk applied for employment at the Abercrombie store in
9 Cherry Hill, New Jersey and that she was not hired. Defendants deny the remaining allegations
10 contained in paragraph 30 of the Complaint.

11 31. Defendants are without sufficient information to form a belief as to the truth or
12 falsity of the residency, minority status, or educational background of Mr. Steele and therefore
13 deny same. Defendants admit that Mr. Steele worked as a Brand Representative and an
14 Assistant Manager for Abercrombie & Fitch. Defendants deny the remaining allegations
15 contained in paragraph 31 of the Complaint.

16 32. For their answer to paragraph 32 of the Fourth Amended Complaint, Defendants
17 state that Abercrombie & Fitch Stores, Inc. is an Ohio corporation. A separate corporate entity,
18 Abercrombie & Fitch Stores, Inc., a Delaware corporation, which is now known as Abercrombie
19 & Fitch Management Co., operated all Abercrombie stores from July 1996 until August 9, 2000.
20 From August 9, 2000 until April 26, 2002, Abercrombie & Fitch Stores, Inc., the Ohio
21 corporation, operated all Abercrombie stores. Since May 2002, Abercrombie & Fitch Stores,
22 Inc., the Ohio corporation, has operated all Abercrombie stores outside of the states of California
23 and Ohio. Defendants deny the remaining allegations contained in paragraph 32 of the Fourth
24 Amended Complaint.

25 33. For their answer to paragraph 33 of the Fourth Amended Complaint, Defendants
26 state that A & F California, LLC is an Ohio limited liability company which has operated all
27 Abercrombie stores within the State of California since on or about May 3, 2002. Defendants
28 deny the remaining allegations contained in paragraph 33 of the Fourth Amended Complaint.

1 34. For their answer to paragraph 34 of the Fourth Amended Complaint, Defendants
2 state that A & F Ohio, Inc. is an Ohio corporation which has operated all Abercrombie stores in
3 Ohio since on or about April 26, 2002. Defendants deny the remaining allegations contained in
4 paragraph 34 of the Fourth Amended Complaint.

5 35. For their answer to paragraph 35 of the Fourth Amended Complaint, Defendants
6 state that Abercrombie & Fitch Management Co. is a Delaware corporation that operates the
7 Abercrombie corporate offices in Ohio. Defendants deny the remaining allegations contained in
8 paragraph 35 of the Fourth Amended Complaint.

9 36. For their answer to paragraph 36 of the Fourth Amended Complaint, Defendants
10 Abercrombie & Fitch Stores, Inc., A&F California LLC, and A&F Ohio, Inc., state that they
11 operate retail clothing stores in a number of states. In 2003, Defendants operated approximately
12 700 stores. Defendants deny the remaining allegations contained in paragraph 36 of the Fourth
13 Amended Complaint.

14 37. For their answer to paragraph 37 of the Fourth Amended Complaint, Defendants
15 Abercrombie & Fitch Stores, Inc., A&F California, LLC and A&F Ohio, Inc. state that they
16 operate stores under the names: "Abercrombie & Fitch," "Hollister," and "Abercrombie."
17 Defendants deny the remaining allegations contained in paragraph 37 of the Fourth Amended
18 Complaint.

19 38. Defendants state that Plaintiffs purport to bring a class action pursuant to the
20 Federal Rules of Civil Procedure. Defendants deny that class certification is appropriate.
21 Defendants deny the remaining allegations contained in paragraph 38 of the Fourth Amended
22 Complaint.

23 39. Defendants state that Plaintiffs purport to bring a class action pursuant to the
24 Federal Rules of Civil Procedure. Defendants deny that all of the Plaintiffs are members of the
25 class they seek to represent. Defendants deny that class certification is appropriate. Defendants
26 deny the remaining allegations contained in paragraph 39 of the Fourth Amended Complaint.

27 40. Defendants deny the allegations contained in paragraph 40 of the Fourth Amended
28 Complaint.

1 41. Defendants deny the allegations contained in paragraph 41 of the Fourth Amended
2 Complaint.

3 42. Defendants deny the allegations contained in paragraph 42 of the Fourth Amended
4 Complaint.

5 43. Defendants deny the allegations contained in paragraph 43 of the Fourth Amended
6 Complaint.

7 44. Defendants deny the allegations contained in paragraph 44 of the Fourth Amended
8 Complaint.

9 45. Defendants deny the allegations contained in paragraph 45 of the Fourth Amended
10 Complaint.

11 46. Defendants admit that Plaintiff Eduardo Gonzalez was not hired as a Brand
12 Representative. Defendants deny that Mr. Gonzalez was not hired based on his race, color,
13 and/or national origin. Defendants are without information sufficient to form a belief as to the
14 truth or falsity of the remaining allegations contained in paragraph 46 of the Fourth Amended
15 Complaint and therefore deny same.

16 47. Defendants deny the allegations contained in paragraph 47 of the Fourth Amended
17 Complaint.

18 48. Defendants admit that Mr. Gonzalez filed a charge of discrimination with the
19 Equal Employment Opportunity Commission on or about April 25, 2003 and that a copy of the
20 charge was attached to the Complaint served on Defendants as Exhibit A. Defendants deny the
21 allegations in the charge. Upon information and belief, Defendants admit that the EEOC issued
22 Mr. Gonzalez a notice of right to sue on or above December 30, 2003, and that a copy of that
23 notice was attached as Exhibit P to the Complaint served on Defendants.

24 49. Defendants admit that Plaintiff Anthony Ocampo worked as a part-time Brand
25 Representative in the Glendale Galleria store beginning in December 1999. Defendants deny
26 that Mr. Ocampo worked until January 2000, but aver that Mr. Ocampo worked until February
27 2000. Defendants are without information sufficient to form a belief as to the truth or falsity of
28 the remaining allegations contained in paragraph 49 of the Fourth Amended Complaint and

1 therefore deny the same.

2 50. Defendants deny the allegations contained in paragraph 50 of the Fourth Amended
3 Complaint.

4 51. Defendants deny the allegations contained in paragraph 51 of the Fourth Amended
5 Complaint.

6 52. Defendants deny the allegations contained in paragraph 52 of the Fourth Amended
7 Complaint.

8 53. Defendants admit that Plaintiff Encarnacion Gutierrez applied for a job at the
9 Abercrombie & Fitch store at the Fourth Street Promenade in or around July 2001. Defendants
10 deny that Mr. Gutierrez was refused hire based on his race, color, and/or national origin.
11 Defendants are without information sufficient to form a belief as to the truth or falsity of the
12 remaining allegations contained in paragraph 53 of the Fourth Amended Complaint and
13 therefore deny the same.

14 54. Defendants deny the allegations contained in paragraph 54 of the Fourth Amended
15 Complaint.

16 55. Defendants deny the allegations contained in paragraph 55 of the Fourth Amended
17 Complaint.

18 56. Defendants admit that Mr. Gutierrez filed a charge of discrimination with the
19 EEOC on or about May 21, 2002 and that a copy of said Charge was attached to the Fourth
20 Amended Complaint served on Defendants as Exhibit B. Defendants deny the allegations in the
21 Charge. Upon information and belief, Defendants admit that the EEOC issued a notice of right
22 to sue on or about December 30, 2003, and that a copy of that notice was attached as Exhibit Q
23 to the Complaint served on Defendants.

24 57. Defendants admit that Plaintiff Johan Montoya applied for a position at the
25 Abercrombie & Fitch store at the Topanga Mall in Canoga Park, California in or about August
26 2002 and that he was not hired. Defendants are without information sufficient to form a belief
27 as to the truth or falsity of whether Mr. Montoya is a Latino male and is a student at the
28 University of California at Santa Barbara and therefore deny the same. Defendants deny the

1 remaining allegations contained in paragraph 57 of the Fourth Amended Complaint.

2 58. Defendants deny the allegations contained in paragraph 58 of the Fourth Amended
3 Complaint.

4 59. Defendants admit that Mr. Montoya filed a charge of discrimination with the
5 EEOC on or about April 22, 2003, that a copy of that charge was attached to the Fourth
6 Amended Complaint served on Defendants as Exhibit C, but deny the allegations in the Charge.
7 Upon information and belief, Defendants admit that the EEOC issued Mr. Montoya a notice of
8 right to sue on or about December 30, 2003, and that a copy of the notice was attached as
9 Exhibit R to the Complaint served on Defendants.

10 60. Defendants admit that Plaintiff Juancarlos Gómez-Montejano worked at the
11 Abercrombie & Fitch store at the Fourth Street Promenade in Santa Monica, California.
12 Defendants are without information sufficient to form a belief as to the truth or falsity of the
13 allegation that Mr. Gómez-Montejano is or was a student at the University of California at Los
14 Angeles or of his minority status and therefore deny same. Defendants deny the remaining
15 allegations contained in paragraph 60 of the Fourth Amended Complaint.

16 61. Defendants deny the allegations contained in paragraph 61 of the Fourth Amended
17 Complaint.

18 62. Defendants deny the allegations contained in paragraph 62 of the Fourth Amended
19 Complaint.

20 63. Defendants admit that Mr. Gómez-Montejano filed a charge of discrimination with
21 the EEOC on or about December 21, 1999 and that a copy of that charge was attached to the
22 Fourth Amended Complaint served on Defendants as Exhibit D. Defendants admit that the
23 EEOC issued a Letter of Determination and that a copy of that Letter was attached to the Fourth
24 Amended Complaint served on Defendants as Exhibit E. Defendants deny the allegations in the
25 Charge and deny that the Letter of Determination was properly issued, and similarly deny that
26 the Letter of Determination reached the correct conclusion. Defendants admit that the DFEH
27 issued to Mr. Gómez-Montejano a Notice of Right to sue on or about December 21, 1999 and
28 that a copy of that notice was attached to the Fourth Amended Complaint served on Defendants

1 as Exhibit F. Defendants admit that the EEOC issued to Mr. Gómez-Montejano a notice of right
2 to sue on or about December 30, 2003, and that a copy of that notice was attached to the
3 Complaint served on Defendants as Exhibit S.

4 64. Defendants admit that Plaintiff Jennifer Lu worked as a Brand Representative at
5 the Abercrombie & Fitch store at the Crystal Court Mall in Costa Mesa, California but deny that
6 Ms. Lu worked there from September 2000 through February 2003. Defendants are without
7 information sufficient to form a belief as to the minority status of Ms. Lu or whether she is a
8 student at the University of California at Irvine and therefore deny same. Defendants deny the
9 remaining allegations contained in paragraph 64 of the Fourth Amended Complaint.

10 65. Defendants admit that in or around January 2003, certain headquarters and
11 regional employees visited the Abercrombie & Fitch store at the Crystal Court Mall. Defendants
12 deny the remaining allegations contained in paragraph 65 of the Fourth Amended Complaint.

13 66. Defendants deny the allegations contained in paragraph 66 of the Fourth Amended
14 Complaint.

15 67. Defendants deny the allegations contained in paragraph 67 of the Fourth Amended
16 Complaint.

17 68. Defendants admit that Ms. Lu filed a charge of discrimination with the EEOC on
18 or about April 22, 2003, that a copy of that charge was attached to the Fourth Amended
19 Complaint served on Defendants as Exhibit G, and deny the allegations in the Charge.
20 Defendants admit that the DFEH issued a Notice of Right to Sue dated April 29, 2003, a copy of
21 which was attached to the Fourth Amended Complaint served on Defendants as Exhibit G.
22 Upon information and belief, Defendants admit that the EEOC issued Ms. Lu a notice of right to
23 sue on or about December 30, 2003, and that a copy of that notice was attached as Exhibit T to
24 the Complaint served on Defendants.

25 69. Defendants admit that Plaintiff Austin Chu worked as a Brand Representative at
26 the Abercrombie & Fitch store at the Crystal Court Mall in Costa Mesa, California, but deny that
27 Mr. Chu worked from June 2001 through March 2003. Defendants deny that Mr. Chu was
28 constructively discharged. Defendants are without information sufficient to form a belief as to

1 the truth or falsity of the remaining allegations contained in paragraph 69 of the Fourth
2 Amended Complaint and therefore deny same.

3 70. Defendants admit that Mr. Chu tendered his resignation in or about March, 2003.
4 Defendants deny the remaining allegations contained in paragraph 70 of the Fourth Amended
5 Complaint.

6 71. Defendants deny the allegations contained in paragraph 71 of the Fourth Amended
7 Complaint.

8 72. Defendants admit that Mr. Chu filed a charge of discrimination with the EEOC on
9 or about April 22, 2003, that a copy was attached to the Complaint served on Defendants as
10 Exhibit H, and deny the allegations in the Charge. Defendants admit that the DFEH issued a
11 Notice of Right to Sue dated April 29, 2003, a copy of which was attached to the Fourth
12 Amended Complaint served on Defendants at Exhibit H. Upon information and belief,
13 Defendants admit that the EEOC issued a notice of right to sue to Mr. Chu on December 30,
14 2003, and that a copy of the notice was attached to the Complaint served on Defendants at
15 Exhibit U.

16 73. Defendants admit that Plaintiff Ivy Nguyen worked as a Brand Representative at
17 the Abercrombie & Fitch store at the Crystal Court store in Costa Mesa, California. Defendants
18 are without information sufficient to form a belief as to the truth or falsity of the minority status
19 of Ms. Nguyen or of the allegation that Ms. Nguyen is a student of the University of California
20 at Irvine and therefore deny same. Defendants deny the remaining allegations contained in
21 paragraph 73 of the Fourth Amended Complaint.

22 74. Defendants deny the allegations contained in paragraph 74 of the Fourth Amended
23 Complaint.

24 75. Defendants deny the allegations contained in paragraph 75 of the Fourth Amended
25 Complaint.

26 76. Defendants deny the allegations contained in paragraph 76 of the Fourth Amended
27 Complaint.

28 77. Defendants admit that Ms. Nguyen filed a charge of discrimination with the EEOC

1 on or about June 16, 2003, that a copy of that charge was attached to the Fourth Amended
2 Complaint served on Defendants as Exhibit I, and deny the allegations in the Charge. Upon
3 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Ms.
4 Nguyen on December 30, 2003, and that a copy of that notice was attached to the Complaint
5 served on Defendants at Exhibit V.

6 78. Defendants admit that Plaintiff Angeline Wu worked as a Brand Representative at
7 the Abercrombie & Fitch store at the Crystal Court store in Costa Mesa, California. Defendants
8 are without information sufficient to form a belief as to the truth or falsity of the remaining
9 allegations contained in paragraph 78 of the Fourth Amended Complaint and therefore deny
10 same.

11 79. Defendants deny the allegations contained in paragraph 79 of the Fourth Amended
12 Complaint.

13 80. Defendants deny the allegations contained in paragraph 80 of the Fourth Amended
14 Complaint.

15 81. Defendants deny the allegations contained in paragraph 81 of the Fourth Amended
16 Complaint.

17 82. Defendants deny the allegations contained in paragraph 82 of the Fourth Amended
18 Complaint.

19 83. Defendants admit that Ms. Wu filed a charge of discrimination with the EEOC on
20 or about April 17, 2003, that a copy of that charge was attached to the Fourth Amended
21 Complaint served on Defendants as Exhibit J, and deny the allegations in the Charge.
22 Defendants admit that the DFEH issued a Notice of Right to Sue dated April 22, 2003, a copy of
23 which was attached to the Fourth Amended Complaint served on Defendants at Exhibit J. Upon
24 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Ms.
25 Wu on December 30, 2003, and that a copy of that notice was attached to the Complaint served
26 on Defendants at Exhibit W.

27 84. Defendants state that Mr. Fight was employed from June 3, 2003 until June 13,
28 2003, at which point Mr. Fight resigned his employment. Defendants deny that Mr. Fight was

1 constructively discharged, and also deny that he was not allowed to work on the sales floor due
2 to his race or color. Defendants are without sufficient information to form a belief as to the
3 residence or minority status of Mr. Fight, and therefore deny same. Defendants deny the
4 remaining allegations contained in paragraph 84 of the Fourth Amended Complaint.

5 85. Defendants deny that Mr. Fight was denied hire due to his race or color.
6 Defendants are without sufficient information to form a belief as to the remaining allegations
7 contained in paragraph 85 of the Fourth Amended Complaint, and therefore deny same.

8 86. Defendants state that Mr. Fight was hired on or about June 3, 2003. Defendants
9 are without sufficient information to form a belief as to the truth or falsity of the allegations
10 contained in paragraph 86 of the Fourth Amended Complaint, and therefore deny same.

11 87. Defendants deny that Mr. Fight was constructively discharged, and also deny that
12 he was not considered for a Brand Representative position due to his race or color. Defendants
13 are without sufficient information to form a belief as to the remaining allegations contained in
14 paragraph 87 of the Fourth Amended Complaint, and therefore deny the same.

15 88. Defendants specifically deny that Mr. Fight was discharged. Defendants are
16 without sufficient information to form a belief as to the truth or falsity of the remaining
17 allegations contained in paragraph 88 of the Fourth Amended Complaint, and therefore deny
18 same.

19 89. Defendants deny the allegations contained in paragraph 89 of the Fourth Amended
20 Complaint.

21 90. Defendants state that Mr. Fight filed a charge of discrimination with the EEOC on
22 or about August 16, 2003, that a copy of that charge was attached to the Fourth Amended
23 Complaint served on Defendants as Exhibit K, and deny the allegations in the Charge. Upon
24 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Mr.
25 Fight on December 30, 2003, and that a copy of that notice was attached to the Complaint served
26 on Defendants at Exhibit X.

27 91. Defendants state that Ms. Grubb was employed as a Brand Representative from
28 November 17, 2002 until December 31, 2002. Defendants are without sufficient information to

1 form a belief as to the truth or falsity of Ms. Grubb's minority status or the allegation that she is
2 a student. Defendants deny the remaining allegations contained in paragraph 91 of the Fourth
3 Amended Complaint, and specifically deny that Ms. Grubb was constructively discharged.

4 92. Defendants state that Ms. Grubb was employed as a Brand Representative from
5 November 17, 2002 until December 31, 2002. Defendants deny the remaining allegations
6 contained in paragraph 92 of the Fourth Amended Complaint.

7 93. Defendants deny the allegations contained in paragraph 93 of the Fourth Amended
8 Complaint.

9 94. Defendants deny the allegations contained in paragraph 94 of the Fourth Amended
10 Complaint.

11 95. Defendants deny the allegations contained in paragraph 95 of the Fourth Amended
12 Complaint.

13 96. Defendants state that Ms. Grubb filed a charge of discrimination with the EEOC
14 on or about August 16, 2003, that a copy of that charge was attached to the Fourth Amended
15 Complaint served on Defendants as Exhibit L, and deny the allegations in the Charge. Upon
16 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Ms.
17 Grubb on December 30, 2003, and that a copy of that notice was attached to the Complaint
18 served on Defendants at Exhibit Y.

19 97. Defendants deny that Mr. Culpepper was denied positions as a Brand
20 Representative on account of his race or color. Defendants are without sufficient information to
21 form a belief as to the truth or falsity of the remaining allegations contained in paragraph 97 of
22 the Fourth Amended Complaint, and therefore deny same.

23 98. Defendants are without sufficient information to form a belief as to the truth or
24 falsity of the allegations contained in paragraph 98 of the Fourth Amended Complaint, and
25 therefore deny same.

26 99. Defendants are without sufficient information to form a belief as to the truth or
27 falsity of the allegations contained in paragraph 99 of the Fourth Amended Complaint, and
28 therefore deny same.

1 100. Defendants are without sufficient information to form a belief as to the truth or
2 falsity of the allegations contained in paragraph 100 of the Fourth Amended Complaint, and
3 therefore deny same.

4 101. Defendants deny the allegations contained in paragraph 101 of the Fourth
5 Amended Complaint.

6 102. Defendants state that Mr. Culpepper filed a charge of discrimination with the
7 EEOC on or about August 16, 2003, that a copy of that charge was attached to the Fourth
8 Amended Complaint served on Defendants as Exhibit M, and deny the allegations in the Charge.
9 Upon information and belief, Defendants admit that Mr. Culpepper was issued a notice of right
10 to sue by the EEOC on December 30, 2003, and that a copy of the notice was attached to the
11 Complaint served on Defendants at Exhibit Z.

12 103. Defendants deny that Ms. Douglass was denied a position as a Brand
13 Representative on account of her race, color, and/or national origin. Defendants are without
14 sufficient information to form a belief as to the truth or falsity of the remaining allegations
15 contained in paragraph 103 of the Fourth Amended Complaint, and therefore deny the same.

16 104. Defendants are without sufficient information to form a belief as to the truth or
17 falsity of the allegations contained in paragraph 104 of the Fourth Amended Complaint, and
18 therefore deny the same.

19 105. Defendants are without sufficient information to form a belief as to the truth or
20 falsity of the information contained in paragraph 105 of the Fourth Amended Complaint, and
21 therefore deny the same.

22 106. Defendants deny the allegations contained in paragraph 106 of the Fourth
23 Amended Complaint.

24 107. Defendants state that Ms. Douglass filed a charge of discrimination with the EEOC
25 on or about December 23, 2003, and that a copy of that charge was attached to the Fourth
26 Amended Complaint served on Defendants as Exhibit N, and deny the allegations in the charge.
27 Defendants admit that the DFEH issued a Notice of Right To Sue dated December 23, 2003, a
28 copy of which was attached to the Fourth Amended Complaint served on Defendants as Exhibit

1 N. Upon information and belief, Defendants admit that the EEOC issued Ms. Douglass a notice
2 of right to sue on December 30, 2003, and that a copy of that notice was attached to the
3 Complaint served on Defendants at Exhibit AA.

4 108. Defendants deny that Mr. Sherrod was denied positions as a Brand Representative
5 on account of his race, color, and/or national origin. Defendants are without sufficient
6 information to form a belief as to the truth or falsity of the remaining allegations contained in
7 paragraph 108 of the Fourth Amended Complaint, and therefore deny the same.

8 109. Defendants are without sufficient information to form a belief as to the truth or
9 falsity of the allegations contained in paragraph 109 of the Fourth Amended Complaint, and
10 therefore deny the same.

11 110. Defendants deny the allegations contained in paragraph 110 of the Fourth
12 Amended Complaint.

13 111. Defendants state that Mr. Sherrod filed a charge of discrimination with the EEOC
14 on or about December 1, 2003, that a copy of that charge was attached to the Fourth Amended
15 Complaint served on Defendants as Exhibit O, and deny the allegations in the charge.
16 Defendants admit that the DFEH issued a Notice of Right To Sue dated December 30, 2003, a
17 copy of which was attached to the Fourth Amended Complaint served on Defendants as Exhibit
18 O. Upon information and belief, Defendants admit that the EEOC issued a notice of right to sue
19 to Mr. Sherrod on December 30, 2003, and that a copy of the notice was attached to the
20 Complaint served on Defendants at Exhibit BB.

21 112. Defendants are without sufficient information to form a belief as to the truth or
22 falsity of the residency, student enrollment, or minority status of Ms. Hawk and therefore deny
23 same. Defendants admit that Ms. Hawk applied for employment at the Abercrombie store in
24 Cherry Hill, New Jersey and that she was not hired. Defendants deny the remaining allegations
25 contained in paragraph 112 of the Complaint.

26 113. Defendants admit that Ms. Hawk was interviewed for a position at Abercrombie &
27 Fitch and that she was not hired. Defendants deny the remaining allegations contained in
28 paragraph 113 of the Complaint.

1 114. Defendants deny the allegations contained in paragraph 114 of the Complaint.

2 115. Defendants deny the allegations contained in paragraph 115 of the Complaint.

3 116. Defendants state that Ms. Hawk filed a charge of discrimination with the EEOC on
4 or about July 17, 2003, that a copy of that charge was attached to the Fourth Amended
5 Complaint served on Defendants as Exhibit CC, and deny the allegations in the charge.

6 117. Defendants are without sufficient information to form a belief as to the truth or
7 falsity of the residency, minority status, or educational background of Mr. Steele and therefore
8 deny same. Defendants admit that Mr. Steele worked as a Brand Representative and an
9 Assistant Manager for Abercrombie & Fitch. Defendants admit that Mr. Steele left his
10 employment with Abercrombie & Fitch Stores, Inc. Defendants deny the remaining allegations
11 contained in paragraph 117 of the Complaint.

12 118. Defendants deny the allegations contained in paragraph 118 of the Complaint.

13 119. Defendants state that Mr. Steele filed a charge of discrimination with the EEOC on
14 or about February 11, 2003, that a copy of that charge was attached to the Fourth Amended
15 Complaint served on Defendants as Exhibit DD, and deny the allegations in the charge. Upon
16 information and belief, Defendants admit that the EEOC issued a Notice of Right To Sue to Mr.
17 Steele on November 4, 2004, and that a copy of that notice was attached to the Fourth Amended
18 Complaint served on Defendants as Exhibit EE. Defendants deny the remaining allegations
19 contained in Paragraph 119 of the Fourth Amended Complaint.

20 120. Defendants deny the allegations contained in paragraph 120 of the Complaint.

21 121. Defendants admit that the EEOC issued a Letter of Determination on September
22 13, 2001, attached to the Fourth Amended Complaint as Exhibit E. Defendants deny that the
23 Letter of Determination was properly issued, and similarly denies that the Letter of
24 Determination reached the correct conclusion.

25 122. Upon information and belief, Defendants admit the allegations contained in
26 paragraph 122 of the Fourth Amended Complaint.

27 123. Upon information and belief, Defendants admit that the EEOC issued Letters of
28 Determination on September 30, 2004, and that copies of the letters of determination were

1 attached to the Fourth Amended Complaint served on Defendants as Exhibits FF to OO.
2 Defendants deny the allegations and findings set forth in the letters of determination.
3 Defendants deny the remaining allegations contained in paragraph 123 of the Fourth Amended
4 Complaint.

5 124. Defendants deny the allegations contained in paragraph 124 of the Fourth
6 Amended Complaint.

7 125. Defendants deny the allegations contained in paragraph 125 of the Fourth
8 Amended Complaint.

9 126. Defendants deny the allegations contained in paragraph 126 of the Fourth
10 Amended Complaint. Defendants deny the allegations contained in the sub-parts of paragraph
11 126 of the Fourth Amended Complaint.

12 127. For their answer to paragraph 127 of the Fourth Amended Complaint, Defendants
13 reincorporate and reallege each of the admissions, statements and denials contained in their
14 answer to paragraphs 1 through 126 of the Fourth Amended Complaint, as if fully restated
15 herein.

16 128. Defendants state that Plaintiffs purport to bring a class action under the Federal
17 Rules of Civil Procedure. Defendants deny that class certification is appropriate. Defendants
18 deny the remaining allegations contained in paragraph 128 of the Fourth Amended Complaint.

19 129. Defendants deny the allegations contained in paragraph 129 of the Fourth
20 Amended Complaint.

21 130. Defendants deny the allegations contained in paragraph 130 of the Fourth
22 Amended Complaint.

23 131. Defendants admit that the EEOC issued a Letter of Determination on September
24 13, 2001, attached to the Fourth Amended Complaint as Exhibit E. Defendants deny that the
25 Letter of Determination was properly issued, and similarly denies that the Letter of
26 Determination reached the correct conclusion.

27 132. Defendants deny the allegations contained in paragraph 132 of the Fourth
28 Amended Complaint.

1 133. In response to paragraph 133 of the Fourth Amended Complaint, Defendants deny
2 that the requested relief, or any relief whatsoever, is proper. Defendants deny the remaining
3 allegations contained in paragraph 133 of the Fourth Amended Complaint.

4 134. For their answer to paragraph 134 of the Fourth Amended Complaint, Defendants
5 reincorporate each of the admissions, statements and denials contained in their answer to
6 paragraphs 1 through 133 of the Fourth Amended Complaint, as if fully restated herein.

7 135. Defendants state that Plaintiffs purport to bring a class action pursuant to the
8 Federal Rules of Civil Procedure. Defendants deny that class certification is appropriate.
9 Defendants deny the remaining allegations contained in paragraph 135 of the Fourth Amended
10 Complaint.

11 136. Defendants deny the allegations contained in paragraph 136 of the Fourth
12 Amended Complaint.

13 137. Defendants deny the allegations contained in paragraph 137 of the Fourth
14 Amended Complaint.

15 138. For their answer to paragraph 138 of the Fourth Amended Complaint, Defendants
16 deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
17 remaining allegations contained in paragraph 138 of the Fourth Amended Complaint.

18 139. For their answer to paragraph 139 of the Fourth Amended Complaint, Defendants
19 reincorporate and reallege each of the admissions, statements and denials contained in their
20 answer to paragraphs 1 through 138 of the Fourth Amended Complaint, as if fully restated
21 herein.

22 140. Defendants deny the allegations contained in paragraph 140 of the Fourth
23 Amended Complaint.

24 141. Defendants deny that Plaintiffs have timely complied with all prerequisites to suit.
25 Defendants deny the remaining allegations contained in paragraph 141 of the Fourth Amended
26 Complaint.

27 142. Defendants deny that the requested relief or any relief is proper.

28 143. For their answer to paragraph 143 of the Fourth Amended Complaint, Defendants

1 reincorporate and reallege each of the admissions, statements and denials contained in their
2 answer to paragraphs 1 through 142 of the Fourth Amended Complaint, as if fully restated
3 herein.

4 144. Defendants deny the allegations contained in paragraph 144 of the Fourth
5 Amended Complaint.

6 145. Defendants deny the allegations contained in paragraph 145 of the Fourth
7 Amended Complaint.

8 146. Defendants deny the allegations contained in paragraph 146 of the Fourth
9 Amended Complaint.

10 147. Defendants deny the allegations contained in paragraph 147 of the Fourth
11 Amended Complaint.

12 148. Defendants deny that the requested relief or any relief is proper.

13 149. For their answer to paragraph 149 of the Fourth Amended Complaint, Defendants
14 reincorporate and reallege each of the admissions, statements and denials contained in their
15 answer to paragraphs 1 through 148 of the Fourth Amended Complaint, as if fully restated
16 herein.

17 150. Defendants deny the allegations contained in paragraph 150 of the Fourth
18 Amended Complaint.

19 151. Defendants deny the allegations contained in paragraph 151 of the Fourth
20 Amended Complaint.

21 152. Defendants deny that the requested relief or any relief is proper.

22 153. Defendants deny the allegations contained in paragraph 153 of the Fourth
23 Amended Complaint.

24 154. Defendants deny the allegations contained in paragraph 154 of the Fourth
25 Amended Complaint.

26 155. Defendants deny the allegations contained in paragraph 155 of the Fourth
27 Amended Complaint.

28 156. Defendants deny the allegations contained in paragraph 156 of the Fourth

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Amended Complaint.

157. Defendants deny that class certification is appropriate. Defendants deny the remaining allegations contained in paragraph 157 of the Fourth Amended Complaint.

158. Defendants deny that the named plaintiffs are adequate class representatives and deny that class certification is appropriate. Defendants deny the remaining allegations contained in paragraph 158 of the Fourth Amended Complaint.

159. Defendants deny that class certification is appropriate and deny that named plaintiffs' counsel should be designated class counsel. Defendants deny the remaining allegations contained in paragraph 159 of the Fourth Amended Complaint.

160. In response to paragraph 160 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 160 of the Fourth Amended Complaint.

161. In response to paragraph 161 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 161 of the Fourth Amended Complaint.

162. In response to paragraph 162 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 162 of the Fourth Amended Complaint.

163. In response to paragraph 163 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 163 of the Fourth Amended Complaint.

164. In response to paragraph 164 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 164 of the Fourth Amended Complaint.

165. In response to paragraph 165 of the Fourth Amended Complaint, Defendants deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining allegations contained in paragraph 165 of the Fourth Amended Complaint.

166. In response to paragraph 166 of the Fourth Amended Complaint, Defendants deny

1 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
2 remaining allegations contained in paragraph 166 of the Fourth Amended Complaint.

3 167. In response to paragraph 167 of the Fourth Amended Complaint, Defendants deny
4 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
5 remaining allegations contained in paragraph 167 of the Fourth Amended Complaint.

6 168. In response to paragraph 168 of the Fourth Amended Complaint, Defendants deny
7 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
8 remaining allegations contained in paragraph 168 of the Fourth Amended Complaint.

9 169. In response to paragraph 169 of the Fourth Amended Complaint, Defendants deny
10 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
11 remaining allegations contained in paragraph 169 of the Fourth Amended Complaint.

12 170. Defendants deny each and every allegation contained in the Fourth Amended
13 Complaint not specifically admitted to be true herein.

14 **FIRST AFFIRMATIVE DEFENSE**

15 171. Plaintiffs' Fourth Amended Complaint fails to state a claim upon which relief may
16 be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 172. Plaintiffs' claims, in whole or in part, are barred by applicable statutes of
19 limitations.

20 **THIRD AFFIRMATIVE DEFENSE**

21 173. Plaintiffs' Fourth Amended Complaint is barred in whole or in part by the
22 doctrines of waiver, estoppel, and laches.

23 **FOURTH AFFIRMATIVE DEFENSE**

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

25 **FIFTH AFFIRMATIVE DEFENSE**

26 175. Plaintiffs are estopped by their own actions and conduct from asserting any cause
27 of action against Defendants.

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SIXTH AFFIRMATIVE DEFENSE

176. Plaintiffs have engaged in conduct and activities sufficient to constitute a waiver of any right to assert the claims upon which they now seek relief.

SEVENTH AFFIRMATIVE DEFENSE

177. Plaintiffs' Fourth Amended Complaint is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

179. All of the actions of Defendants taken towards Plaintiffs' employment were taken for legitimate, non-discriminatory reasons.

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

181. Plaintiffs have failed to mitigate their damages, if any.

TWELFTH AFFIRMATIVE DEFENSE

182. To the extent Plaintiffs or the class seek 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).

THIRTEENTH AFFIRMATIVE DEFENSE

183. Some or all of Plaintiffs' claims fail because Plaintiffs 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 Plaintiffs’
3 Fourth Amended Complaint be dismissed with prejudice in its entirety with all costs assessed
4 against Plaintiffs, and that the Court grant such further relief as it deems just and proper at law or
5 in equity.

6 DATED: November 11, 2004.

Respectfully submitted,

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/s/

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