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UMME-HANI KHAN

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

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

UMME-HANI KHAN,

Plaintiff-Intervenor,

v.

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

Defendants.

Case No. CV 11-3162 DMR

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

DEMAND FOR JURY TRIAL

INTRODUCTION

1
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.

JURISDICTION

14
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.

VENUE

25
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" and
24 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.

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1 18. On or about February 19, 2010, Plaintiff-Intervenor Khan received a call from
2 the Hollister Co. assistant store manager, who requested that Plaintiff-Intervenor Khan come to
3 the store the following Monday, February 22, 2010.

4 19. On February 22, 2010, Plaintiff-Intervenor Khan went to the Hollister Co. store
5 and met with Chmielewski and Yoakum. Yoakum participated by telephone. Yoakum asked
6 Ms. Khan whether she would remove her hijab while at work to comply with the "Look Policy".
7 Plaintiff-Intervenor Khan refused, citing her Muslim faith. Yoakum thereupon told Plaintiff-
8 Intervenor Khan that A&F could not accommodate her religious observance. Plaintiff-
9 Intervenor Khan was immediately terminated.

10 20. As a result of Defendants' discriminatory refusal to accommodate Plaintiff-
11 Intervenor Khan's religious observation, and its subsequent suspension and termination of
12 Plaintiff-Intervenor Khan, she lost her source of income and experienced emotional distress.

13 **RELIEF ALLEGATIONS**

14 21. An actual controversy exists between Plaintiff-Intervenor and Defendants
15 regarding their respective rights and duties. Plaintiff-Intervenor seeks a judicial declaration of
16 the rights and duties of the respective parties, including a declaration that Defendants' conduct
17 violated Title VII and the California Fair Employment and Housing Act. Plaintiff-Intervenor is
18 informed and believes, and thereon alleges, that Defendants deny that its actions and/or failures
19 to act were unlawful. Declaratory relief is therefore necessary and appropriate at this time so
20 that Plaintiff-Intervenor can ascertain her rights.

21 22. Defendants intentionally acted or failed to act as herein alleged on the basis of
22 Plaintiff-Intervenor Khan's religion.

23 23. Defendants acted or failed to act as herein alleged with malice or reckless
24 indifference to the protected rights of Plaintiff-Intervenor Khan. Plaintiff-Intervenor Khan is
25 thus entitled to recover punitive damages in an amount to be determined according to proof.

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FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

Unlawful Failure to Accommodate Religious Beliefs in Violation of Title VII

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

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

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

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 FEHA
23 when Defendants suspended and subsequently fired Plaintiff-Intervenor Khan because she
24 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 41. Defendants' unlawful actions were intentional, willful, malicious and/or done
2 with reckless disregard for Plaintiff-Intervenor Khan's rights.

3 42. Plaintiff-Intervenor Khan requests relief as described in the Prayer for Relief
4 below.

5 **FOURTH CLAIM FOR RELIEF**

6 *Unlawful Failure to Accommodate Religious Beliefs in Violation of the*
7 *California Fair Employment and Housing Act*

8 43. Plaintiff-Intervenor Khan repeats and realleges the allegations set forth in
9 paragraphs 1 through 42 as though fully set forth herein.

10 44. Defendants' conduct as herein alleged violated the California Fair Employment
11 and Housing Act, which makes it an unlawful employment practice for an employer to
12 discharge or discriminate against an employee in the terms, conditions, and privileges of
13 employment because of her religion. Cal. Gov't Code § 12940.

14 45. Defendants violated FEHA when, rather than initiating steps toward
15 accommodating her religious practice, Defendants suspended and subsequently fired Plaintiff-
16 Intervenor Khan because she wears a hijab and would not remove her hijab.

17 46. Accommodating Plaintiff-Intervenor Khan's religious practice would not have
18 caused Defendants an undue hardship.

19 47. As a proximate result of Defendants' discriminatory actions, Plaintiff-Intervenor
20 Khan has suffered losses in compensation, earning capacity, humiliation, mental anguish, and
21 emotional distress. As a result of such discriminatory actions and consequent harm, Plaintiff-
22 Intervenor Khan has suffered such damages in an amount to be proved at trial.

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

25 49. Plaintiff-Intervenor Khan requests relief as described in the Prayer for Relief
26 below.

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