

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DULAZIA BURCHETTE

Plaintiff,

-against-

ABERCROMBIE & FITCH STORES, INC., and
ABERCROMBIE & FITCH COMPANY; and
ABERCROMBIE & FITCH TRADING COMPANY;
and MICHAEL S. JEFFRIES, Individually and in his
Official Capacity; and JAMES LAUTENBACHER,
Individually and in his Official Capacity; and
JONATHAN LANDAU, Individually and in his
Official Capacity; and REGINA PARK, Individually
and in her Official Capacity,

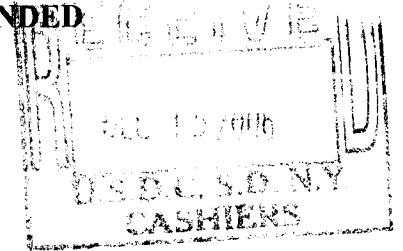
Defendants.

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**SECOND AMENDED
COMPLAINT**

08 Civ. 8786 (RMB) (THK)

**TRIAL BY JURY
DEMANDED**



Plaintiff, by her attorney, Roya Moghadassi-Weiss, alleges as follows:

1. Plaintiff brings this action pursuant to Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1985 *et seq.*, as amended, and the Laws of the State of New York, including Executive Law § 296 *et seq.*, as amended, and the Administrative Code of the City of New York § 8-107 *et seq.* as amended, and the Common Law Doctrine. Plaintiff seeks declaratory and injunctive relief, back pay, front pay, compensatory damages, punitive damages and other relief.
2. This Court has jurisdiction over this action pursuant to 8 U.S.C. § 1331 for civil actions arising under the Constitution and laws of the United States and pursuant to 42 U.S.C. Section 1981, *et seq.*; 42 U.S.C. § 1985 *et seq.*, and the doctrine of pendent jurisdiction.
3. Venue is proper in this Court because one or more of the Defendants reside in this judicial district and substantial part of the claim arose in this district.

4. Upon information and belief, Defendant Abercrombie & Fitch Stores, Inc. (“A&F”) is a Delaware corporation with its principal place of business in Ohio and is registered to do business in New York.
5. Defendant A&F is a corporation engaged in the retail sale of men’s and women’s apparel through a network of retail stores in the City of New York and does business in the state of New York.
6. Defendant Abercrombie & Fitch Trading Company is a Delaware corporation with its principal place of business in Ohio and is registered to do business in New York.
7. Defendant Abercrombie & Fitch Company is a Delaware corporation with its principal place of business in Ohio and is registered to do business in New York.
8. Defendant Abercrombie & Fitch Company is the parent company of defendants A&F and Abercrombie & Fitch Trading Company.
9. At all times relevant to the subject matter of this action, Defendant A&F was and is an employer within the meaning of the relevant federal, state and municipal laws.
10. At all times relevant to the subject matter of this action, Defendant Abercrombie & Fitch Company was and is an employer within the meaning of the relevant federal, state and municipal laws.
11. At all times relevant to the subject matter of this action, Defendant Abercrombie & Fitch Trading Company was and is an employer within the meaning of the relevant federal, state and municipal laws.
12. Plaintiff is a resident of the State of New York. Plaintiff is female.
13. Plaintiff is an African-American and her skin color is black.
14. At all time relevant to the subject matter of this complaint, plaintiff was employed at defendant A&F’s Store located at 720 Fifth Avenue, New York, New York, 10019 (hereinafter referred to as the “Store”), as a Sales Associate and the actions and omissions complained of herein took place at the Store.
15. At all times relevant to the subject matter of this complaint, plaintiff was an employee as defined by the relevant federal, state and municipal laws.

16. At all times relevant to the subject matter of this complaint, defendant Michael S. Jeffries is the Chairman of the Board and Chief Executive Officer of defendant Abercrombie & Fitch Company.
17. At all times relevant to the subject matter of this complaint, defendant James Lautenbacher is employed by defendant A&F, and worked at the Store as a Senior Visual Manager and functioned in a supervisory capacity towards plaintiff and many other African-American and minority employees. Defendant Lautenbacher is White/Caucasian.
18. At all times relevant to the subject matter of this action, defendant Jonathan Landau is employed by defendant A&F, and worked at the Store as a Visual Manager and functioned in a supervisory capacity towards plaintiff and many other African-American and minority employees. Defendant Landau is White/Caucasian.
19. At all times relevant to the subject matter of this action, defendant Regina Park is employed by defendant A&F and worked at the Store as a Supervisor or Manager and functioned in a supervisory capacity towards plaintiff and many other African-American and minority employees. Defendant Regina Park is White/Caucasian.
20. Plaintiff's employment at defendant A&F began on or about September 10, 2007.
21. The management of defendant A&F is dominated by White/Caucasian male and female employees who perpetuate an objectively hostile work environment permeated with discriminatory acts and omissions based on race, and color of skin.
22. The corporate culture at defendant A&F with the encouragement and participation of senior management, is permeated with discriminatory acts and omissions towards employees because of their race and color of skin.
23. Defendant A&F has a policy and practice of discriminating against employees in the terms and conditions of their employment because of their race and the color of their skin.

24. Defendant A&F has a “look” policy which regulates and classifies hair color on the basis of employee race and color of skin.
25. Defendant Jeffries is the chief architect of defendant A&F’s “look” policy and actively and directly supervises and participates in its enforcement by among other things, regularly making on-site visits to each retail location of defendant A&F, including the Store.
26. At all times relevant to the subject matter of this complaint, defendants have a policy of threatening, intimidating, taunting, punishing and terminating African-American employees and employees of color, because their appearance does not conform to defendants’ expectation of how African American employees should look.
27. While non African-American employees working at the Store sport a variety of hair colors and hair highlights, such as red, brown, blonde, platinum blonde, colors other than their “natural” hair color, African-American employees such as plaintiff, are compelled to either retain the hair color they were born with or color their hair only dark brown or black color to conform with the color of their skin, as a condition of their employment.
28. While African-American employees are forced to have dark hair color to conform with the color of their skin, as a condition for their continued employment, White/Caucasian employees’ employment is not predicated on such conditions.
29. In contrast to African-American employees who are threatened with termination if they do not restrict their hair color to black or dark brown hair color, White/Caucasian employees are not threatened with termination when they color their hair a variety of colors, or when they highlight their hair.
30. At all times relevant to the subject matter of this complaint, plaintiff performed her professional functions as a Sales Associate in an exemplary manner.
31. On numerous occasions throughout her employment, plaintiff was complemented by several shift supervisors, on her excellent job performance as a Sales Associate and her treatment of and interfacing with customers.

32. In or about February 2008, defendant Lautenbacher publicly embarrassed, and humiliated plaintiff because of the blonde highlights in her hair.
33. Defendant Lautenbacher asked plaintiff disdainfully: "What is going on with your hair." When plaintiff enquired what he meant, defendant Lautenbacher referred to plaintiff's blonde/light color highlights and ordered plaintiff to remove them, stating: "I can't have you working like that, either you can find a way to take the blonde highlights out, or don't come back to work" or words to that effect.
34. When plaintiff directed defendant Lautenbacher's attention to other White/Caucasian employees and asked why they wore different color hair and highlights, defendant Lautenbacher laughed dismissively.
35. Plaintiff then enquired from defendant Lautenbacher whether she could color her hair all blonde, defendant Launtenbacher publicly ridiculed plaintiff and said; "you can't have blonde hair, it is not natural" or words to that effect.
36. Plaintiff was deeply embarrassed and humiliated as defendant Lautenbacher's ridicule, orders and threats were made in front of other employees.
37. Plaintiff enquired from defendant Lautenbacher what color hair could she have.
38. Defendant Lautenbacher responded: "Either you color your hair all dark color or don't come back" or words to that effect.
39. Defendant Lautenbacher ordered plaintiff to immediately leave the workplace and to remove the highlights.
40. In response to defendant Lautenbacher's threats and not wanting to lose her job, plaintiff reluctantly complied, returned home and colored her hair a dark color to cover her highlights and then returned to work the next day.
41. Plaintiff was a part-time employee and was paid on an hourly basis.
42. As a result of defendant Lautenbacher's discriminatory actions, plaintiff lost pay for the hours she did not work when she was ordered to leave the Store and to color her hair.
43. Plaintiff continued to work for a period of time, performing her duties as a Sales Associate in an excellent manner.

44. In or about June 2008, defendant Landau told plaintiff that he was observing her hair under the light and had a problem with her hair color and that he had discussed the problem with defendant Lautenbacher.
45. Defendant Landau directed plaintiff to report to defendant Lautenbacher.
46. Plaintiff complied. Defendant Lautenbacher told plaintiff that although she had colored her hair in compliance with his previous order, defendant Landau had reported to him that there remained some light color highlights in the middle of plaintiff's hair, when she stood in the light, which had to be removed, immediately.
47. Plaintiff, deeply humiliated and embarrassed and not wanting to lose her job, reluctantly complied, returned home and colored her hair darker to remove the hair color highlights allegedly discernible in the light, and returned to work the next day, or on or about June 4, 2008.
48. Again, plaintiff lost pay as the result of defendants' discriminatory acts because she had to leave the Store and lose compensable time in order to color her hair.
49. When she returned to work, defendant Lautenbacher approached plaintiff, took her into the light to check her hair color. He then stated that plaintiff's hair color was not good enough because there were still some light color hair remaining on the sides of her face, which became visible in the light. Defendant Lautenbacher told plaintiff in a rude and disdainful tone that plaintiff had to color her hair all black and that "she could not work like that" or words to that effect, and directed her to comply with his order immediately.
50. Defendant Lautenbacher told plaintiff that she should have the hair color that she was "born with."
51. Plaintiff responded that black was not her natural hair color. Defendant Lautenbacher responded: "then why are your eyebrows black?" Defendant Lautenbacher then directed plaintiff again to color her hair dark and said "either that or don't come back to work" or words to that effect.

52. Plaintiff complained to defendant Park about defendant Lautenbacher's conduct and she also complained about defendant Lautenbacher's threat of terminating her employment unless plaintiff colored her hair black.
53. Plaintiff complained to defendant Park that White/Caucasian Sales Associates were not targeted for scrutiny for their hair color, as African-American employees or other employees of color, such as plaintiff, were.
54. Plaintiff told defendant Park that she believed that defendant Lautenbacher and Landau's conduct was discriminatory, humiliating, embarrassing and threatening and wanted to file a complaint and asked defendant Park for directions and help.
55. Defendant Park refused to help plaintiff and told plaintiff that there was nothing that she could do and that she would not controvert defendant Lautenbacher's orders because he was the Visual Manager.
56. Plaintiff asked defendant Park where she could go and what number she could call to file a complaint.
57. Defendant Park laughed and responded that she did not have a number that plaintiff could call concerning her complaints and that she would easily replace her with another employee.
58. Plaintiff, humiliated, embarrassed and offended, left defendant A&F premises and did not return.
59. Upon information and belief, many African American employees left defendant A&F's employment or were terminated because they protested defendants' discriminatory acts and omissions.
60. During plaintiff's employment at defendant A&F, another African-American female employee was threatened with termination for coloring her hair. That employee wore a black wig to cover her hair color.
61. Another African-American employee at defendant A&F, with reddish brown hair was directed to color her hair dark brown or black because it was not natural. After the employee informed defendants that she could not color her hair right away, she was told that she could only work in the stock room until she changed her hair color to black or dark brown.

62. Another African-American employee who had brown hair with blonde highlights was fired.
63. Plaintiff was treated less favorably than her White/Caucasian colleagues because of her race, and skin color, and because of her protests against defendants' discriminatory acts and omissions.
64. Defendants retaliated against plaintiff for protesting against defendants' illegal and discriminatory acts, by causing her to lose income and by discharging her or by causing her constructive discharge.
65. Defendant A&F's White/Caucasian Visual Managers and Supervisors have the discretion and authority to make subjective and arbitrary employment decisions and selectively apply them to African-American employees.
66. Defendant A&F's White/Caucasian Visual Managers and Supervisors participate in employment decisions concerning the employees they supervise, including firing and disciplinary actions, based on a policy that promotes racial stereotyping.
67. There was a meeting of the minds between the individually named defendants who conspired and acted in concert to discriminate against and to retaliate against African-American and/or employees of color, including plaintiff, because of their race and skin color.
68. By failing to investigate, reprimand and/or terminate their discriminatory acts and omissions, defendants promoted, aided, abetted, and encouraged discriminatory, retaliatory and threatening acts and omissions against plaintiff and other African-American employees because of their race and skin color.
69. By their acts and omissions, defendants, intentionally and with aforethought, created and encouraged an objectively hostile and demeaning work environment for plaintiff and other African-American employees or employees of color.
70. By their acts and omissions, defendants, acting with intent and aforethought, publicly harassed and demeaned plaintiff.
71. Despite being fully aware of the serious nature of the hostile and discriminatory work environment to which plaintiff and other Africa-

American employees were subjected, defendants refused to take any reasonable steps to terminate the discriminatory practices.

72. The pervasive discriminatory policies and practices of defendant A&F have directly resulted in defendants' acts being performed with impunity and without fear of internal discipline or reprimand.
73. By threatening employees with termination, defendants actively and aggressively deterred African-American employees from protesting defendants' discriminatory acts and omissions.
74. By their acts and omissions, defendants discriminated against Plaintiff and subjected her to a hostile work environment and unfavorable treatment based on her race and skin color in violation of Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1985 *et seq.*, as amended, and the Laws of the State of New York, including Executive Law § 296 *et seq.*, as amended, and the Administrative Code of the City of New York § 8-107 *et seq.* as amended, and the Common Law Doctrine.
75. Defendants' acts and omissions are and were in violation of the terms of Defendant A&F's internal policies and procedures, which, among other things, prohibit discrimination on the basis of race and skin color.
76. Defendants' acts and omissions are and were part of a policy and practice of violating employees' rights as guaranteed by federal, state and municipal laws, including antidiscrimination laws.
77. By their acts and omissions, defendants have violated, and continue to violate plaintiff's rights in violation of Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1985 *et seq.*, as amended, and the Laws of the State of New York, including Executive Law § 296 *et seq.*, as amended, and the Administrative Code of the City of New York § 8-107 *et seq.* as amended, and the Common Law Doctrine, thereby damaging Plaintiff.
78. Based on the above, plaintiff alleges that defendants have discriminated against her because of her race and color, and they have retaliated against her

for protesting discriminatory acts, in violation of her rights as secured by relevant federal, state, and municipal laws.

79. The series of aforementioned acts and omissions show that there was a meeting of the minds between the individually-named defendants who acted in unison to harass, humiliate, demean and embarrass plaintiff because of her race, color and ethnicity and in retaliation for plaintiff's protests against defendants' discriminatory acts and omissions, and to compel plaintiff to work in a hostile environment with the intend to bring about plaintiff's discharge or constructive discharge.
80. Plaintiff shall rely on discovery to ascertain the nature and extent to which the individually named defendants' actions and omissions were directed by personal motivation and for non-business reasons in disciplining plaintiff, in terminating plaintiff and/or causing her constructive discharge and/or by refusing to address and/or investigate plaintiff's complaints of discrimination and/or in their "subjective" interpretation and application of defendant A&F's "look" policy and its selective application and enforcement on plaintiff.
81. As a direct result of defendants' acts and omissions, plaintiff has suffered and continues to suffer humiliation, embarrassment and emotional distress.
82. As a direct result of defendants' acts and omissions, plaintiff has suffered monetary damages.

FIRST CAUSE OF ACTION

83. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 82.
84. Defendants discriminated against plaintiff with respect to the terms, conditions and privileges of her employment because of her race, and color in violation of Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

SECOND CAUSE OF ACTION

85. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 84.
86. By their acts and omissions, Defendants permitted and/or encouraged a work environment permeated with discriminatory intimidation to the point that was objectively hostile and abusive, in violation of Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

THIRD CAUSE OF ACTION

87. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 86.
88. Defendants subjected Plaintiff to adverse actions, in retaliation for Plaintiff's protests against Defendants' unlawful discriminatory acts and omissions, in violation of Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

FOURTH CAUSE OF ACTION

89. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 88.
90. Defendants discriminated against plaintiff with respect to the terms, conditions and privileges of her employment because of her race, and color in violation of New York State Executive Law Section 296 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

FIFTH CAUSE OF ACTION

91. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 90.
92. By their acts and omissions, Defendants permitted and/or encouraged a work environment permeated with discriminatory intimidation to the point that is

was objectively hostile and abusive, in violation of New York State Executive Law Section 296 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

SIXTH CAUSE OF ACTION

93. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 92.
94. Defendants subjected Plaintiff to adverse actions, in retaliation for Plaintiff's protests against Defendants' unlawful discriminatory acts and omissions, in violation of New York State Executive Law Section 296 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.
95. The individually named defendants aided and abetted and/or directly participated in and/or perpetrated the discriminatory, retaliatory and hostile acts and omissions in violation of New York State Executive Law Section 296 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

SEVENTH CAUSE OF ACTION

96. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 95.
97. Defendants discriminated against plaintiff with respect to the terms, conditions and privileges of her employment because of her race and color in violation of the Administrative Code of the City of New York, Section 8-107 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

EIGHT CAUSE OF ACTION

98. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 97.
99. By their acts and omissions, Defendants permitted and/or encouraged a work environment permeated with discriminatory intimidation to the point that is was objectively hostile and abusive, in violation of the Administrative Code of

the City of New York, Section 8-107 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

NINTH CAUSE OF ACTION

100. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 99.
101. Defendants subjected Plaintiff to adverse actions, in retaliation for Plaintiff's protests against Defendants' unlawful discriminatory acts, in violation of the Administrative Code of the City of New York, Section 8-107 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.
102. The individually named defendants aided and abetted and/or directly participated in and/or perpetrated the discriminatory, retaliatory and hostile acts and omissions in violation of the Administrative Code of the City of New York, Section 8-107 *et seq.*, as amended, thereby damaging Plaintiff in an amount to be shown at trial.

TENTH CAUSE OF ACTION

103. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 102.
104. Defendants, intentionally and with knowledge and aforethought and/or with reckless indifference, and through their illegal and discriminatory acts and omissions, subjected plaintiff to substantial emotional distress.
105. Defendants' conduct was severe and outrageous.
106. As a result of defendants' intentional actions and/or omissions, Plaintiff has been injured in an amount to be shown at trial.

ELEVENTH CAUSE OF ACTION

107. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 106.
108. Defendants had the duty to use reasonable care to avoid causing emotional distress to Plaintiff.

109. Defendants negligently and/or with reckless indifference, and through their illegal and discriminatory acts and omissions, unreasonably causing emotional distress to Plaintiff, thereby damaging Plaintiff in an amount to be shown at trial.

TWELFTH CAUSE OF ACTION

110. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 109.
111. By their acts and omissions, through a series of distinct and separate acts falling outside the proper scope of their official duties, the individually named Defendants conspired to deny Plaintiff equal protection of the laws and/or equal privileges and immunities under the laws, and have deprived her of the rights and privileges of United States citizenship in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1985, thereby damaging Plaintiff in an amount to be shown at trial.

THIRTEENTH CAUSE OF ACTION

112. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 111.
113. Plaintiff relied on the express terms and conditions of Defendant A&F's internal policies and procedures, including but not limited to those pertaining to Equal Employment Opportunity and non-discrimination, to her detriment.
114. Plaintiff's reliance on the express terms and conditions of Defendant A&F's internal policies and procedures was foreseeable, justifiable and reasonable.
115. Plaintiff's reliance on the express terms and conditions of Defendant A&F's internal policies and procedures was substantial.
116. As a result of Defendants' breach of the express terms and conditions Defendant, A&F's internal policies and procedures, Plaintiff has been damaged in an amount to be shown at trial.

WHEREFORE, Plaintiff respectfully prays for judgment in her favor against Defendants, jointly and severally, as follows:

(1) A declaratory judgment that Defendants' acts and omissions complained of herein violated, and continue to violate, Plaintiff's rights as secured by Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1985 *et seq.*, as amended, and the Laws of the State of New York, including Executive Law § 296 *et seq.*, as amended, and the Administrative Code of the City of New York § 8-107 *et seq.* as amended, and the Common Law Doctrine;

(2) Enjoining, punishing and restraining defendants from violating plaintiff's rights under Section 1981 of the Civil Rights Law Act of 1866, 42 U.S.C. § 1981 *et seq.*, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1985 *et seq.*, as amended, and the Laws of the State of New York, including Executive Law § 296 *et seq.*, as amended, and the Administrative Code of the City of New York § 8-107 *et seq.* as amended, and the Common Law Doctrine;

(3) Directing defendant to take such affirmative steps as are necessary to ensure that the effects of the unlawful acts, omissions and practices complained of herein are eliminated and do not continue to affect employment opportunities of employees' of color and/or of ethnic minority;

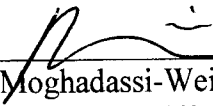
(4) A declaratory judgment that Defendants' acts and omissions complained of herein violated, and continue to violate defendant A&F's internal policies and practices, including but not limited to those relating to Equal Employment Opportunity and non-discrimination;

(5) An order directing Defendants to make Plaintiff, who has been adversely affected by the actions and practices described herein, whole, by providing full back pay, front pay and reimbursement for emotional distress, lost pension, social security, experience, training opportunities, promotional opportunities and other benefits in an amount to be shown at trial;

(6) An award of not less than \$1,000,000 for compensatory damages, exemplary damages, punitive damages and special and general damages; and

(7) Such additional and further relief as the Court deems just and proper.

Dated: New York, New York
December 15, 2008

By: 
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