

1 EMILY T. PATAJO, Bar No. 250212
epatajo@littler.com
2 RACHAEL LAVI, Bar No. 294443
rlavi@littler.com
3 CASSIDY C. VEAL, Bar No. 323899
cveal@littler.com
4 LITTLER MENDELSON, P.C.
2049 Century Park East
5 5th Floor
Los Angeles, CA 90067.3107
6 Telephone: 310.553.0308
Facsimile: 310.553.5583
7

8 Attorneys for Defendants
ABERCROMBIE & FITCH CO.,
9 ABERCROMBIE & FITCH STORES, INC.
AND HOLLISTER CO.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 JASMAINE SHAW,
14 Plaintiff,

15 v.

16 ABERCROMBIE & FITCH CO., an
Ohio Corporation, ABERCROMBIE &
17 FITCH STORES, INC., an Ohio
Corporation; HOLLISTER CO., an
18 Ohio Corporation, and DOES 1-50,
inclusive,

19 Defendants.
20
21

Case No.

**DEFENDANTS' NOTICE OF
REMOVAL TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint filed: May 8, 2019
(Orange County Superior Court, Case
No. 30-2019-01068593-CU-OE-CXC)

Trial Date: None Set

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF JASMAINE SHAW**
3 **AND HER ATTORNEYS OF RECORD:**

4 PLEASE TAKE NOTICE that Defendants ABERCROMBIE & FITCH CO.,
5 ABERCROMBIE & FITCH STORES, INC. and HOLLISTER CO. (“Defendants”)
6 remove the above-captioned action from the Superior Court of the State of California,
7 County of Orange, to the United States District Court, Central District of California,
8 pursuant to 28 U.S.C. sections 1332(d) (Class Action Fairness Act of 2005), 1441(b),
9 and 1446 on the following grounds:

10 **I. STATEMENT OF JURISDICTION**

11 1. This Court has original jurisdiction over this action pursuant to the Class
12 Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts
13 with original jurisdiction of any civil action: (a) that is a class action with a putative
14 class of more than a hundred members; (b) in which any member of a class of plaintiffs
15 is a citizen of a state different from any defendant; and (c) in which the matter in
16 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.
17 See 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with
18 United States Code, title 28, section 1446. As set forth below,
19 this case meets all of CAFA’s requirements for removal and is timely and properly
20 removed by the filing of this Notice.

21 2. Because the Doe defendants have not yet been served, they need not join
22 or consent to Defendants’ Notice of Removal. *Salveson v. Western States Banckcard*
23 *Ass’n*, 731 F.3d 1426, 1429 (9th Cir. 1984) (named defendants not yet served in state
24 court action need not join the notice of removal). CAFA permits any defendant to
25 unilaterally remove the action absent the consent of all defendants if the requirements
26 of CAFA for removal are met, as they are here. 28 U.S.C. § 1453(b) (CAFA action
27 may be removed “by any defendant without the consent of all defendants.”); *see also*
28 *United Steel, et al. v. Shell Oil Co.*, 549 F.3d 1204, 1208-1209 (9th Cir. 2008) (holding

1 that 28 U.S.C. § 1453’s language clarifies that a class action may be removed “by any
2 defendant without the consent of all defendants”).

3 **II. VENUE**

4 3. This action was filed in the Superior Court for the State of California,
5 County of Orange. Venue properly lies in the United States District Court for the
6 Central District of California, Southern Division, pursuant to 28 U.S.C. sections
7 84(c)(3), 1391, 1441, and 1446.

8 **III. PLEADINGS, PROCESS, AND ORDERS**

9 4. On May 8, 2019, Plaintiff Jasmine Shaw (“Plaintiff”) filed a Class Action
10 against Defendants in Orange County Superior Court, titled: *Jasmine Shaw,*
11 *individually and on behalf of others similarly situated v. ABERCROMBIE & FITCH*
12 *CO., an Ohio Corporation; ABERCROMBIE & FITCH STORES, INC., an Ohio*
13 *Corporation; HOLLISTER, CO., an Ohio Corporation, and DOES 1-50, inclusive,*
14 bearing Case No. 30-2019-01068593-CU-OE-CXC (the “Complaint”). The Complaint
15 asserts the following seven (7) causes of action: (1) Failure to Pay Wages Including
16 Overtime as Required by Labor Code §§ 510 and 1194; (2) Failure to Provide Meal
17 Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 7-2001; (3)
18 Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512; (4) Failure
19 to Pay Timely Wages as Required by Labor Code § 203; (5) Failure to Provide Accurate
20 Itemized Wage Statements as Required by Labor Code § 226; (6) Failure to Indemnify
21 Necessary Business Expenses as Required by Labor Code § 2802; (7) Violation of
22 Business & Professions Code § 17200, et seq.

23 5. On July 1, 2019, Defendants were served with the Complaint, along with
24 copies of the Summons and Civil Case Cover Sheet, through their agent for service of
25 process, CT Corporation. A true and correct copy of the Summons, Complaint, and
26 Civil Case Cover Sheet served upon Defendants is attached as Exhibit A to the
27 Declaration of Rachael Lavi (“Lavi Decl.”) In Support of Defendants’ Notice of
28 Removal, filed herewith. Lavi Decl. ¶ 2, Exh. A.

1 6. On July 30, 2019, Defendants filed an Answer to the Complaint. Lavi
2 Decl. ¶ 3, Exh. B.

3 7. Pursuant to 28 U.S.C. § 1446(d), the attached **Exhibits A and B** constitute
4 all process, pleadings and orders served on Defendants or filed or received by
5 Defendants in this action. To Defendants' knowledge, no further process, pleadings, or
6 orders related to this case have been filed in the Superior Court of the State of California,
7 County of Orange, or served by any party. To Defendants' knowledge, no proceedings
8 related hereto have been heard in the Superior Court of the State of California, County
9 of Orange. Lavi Decl. ¶ 4.

10 **IV. TIMELINESS OF REMOVAL**

11 8. An action may be removed from state court by filing a notice of removal,
12 together with a copy of all process, pleadings, and orders served on the defendant within
13 30 days of service on defendant of the initial pleading. *See* 28 U.S.C. § 1446(b); *Murphy*
14 *Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day
15 removal period runs from the service of the summons and complaint). Removal of this
16 action is timely because this Notice of Removal has been filed within 30 days from July
17 1, 2019, when Defendants were served with the Complaint. Lavi Decl. ¶ 2.

18 **V. NOTICE OF REMOVAL TO ADVERSE PARTY AND STATE COURT**

19 9. Contemporaneously with the filing of this Notice of Removal in the United
20 States District Court for the Central District of California, the undersigned is providing
21 written notice of such filing to James R. Hawkins, Gregory Mauro, and Michael Calvo
22 of James Hawkins, APLC, Plaintiff's counsel of record. In addition, a copy of this
23 Notice of Removal will be filed with the Clerk of the Superior Court of the State of
24 California, County of Orange. Lavi Decl. ¶ 4.

25 **VI. CAFA JURISDICTION**

26 10. CAFA grants United States district courts original jurisdiction over:
27 (a) civil class action lawsuits filed under federal or state law; (b) where the alleged class
28 is comprised of at least 100 individuals; (c) in which any member of a class of plaintiffs

1 is a citizen of a state different from any defendant; and (d) where the matter’s amount
2 in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. §
3 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. §
4 1446. As set forth below, this case meets each CAFA requirement for removal, and is
5 timely and properly removed by the filing of this Notice of Removal.

6 **A. Plaintiff Filed A Class Action Under State Law**

7 11. Plaintiff filed her action as a class action based on alleged violations of
8 California state law. Complaint ¶¶ 50, 55, 62, 67, 69, 79, and 85.

9 **B. The Proposed Class Contains At Least 100 Members**

10 12. 28 U.S.C. § 1332(d)(5)(B) states that the provisions of CAFA do not apply
11 to any class action where “the number of members of all proposed plaintiff classes in
12 the aggregate is less than 100.”

13 13. Plaintiff filed this action on behalf of herself and “[a]ll persons who have
14 been employed by Defendants as Non-Exempt Employees or equivalent positions,
15 however titled, in the state of California within four (4) years from the filing of the
16 Complaint in this action until its resolution.” Complaint ¶ 10. In Plaintiff’s own words,
17 in the class “there are at least 100 (one hundred) Class members.” Complaint ¶ 15.

18 14. Based on a review of Defendants’ records, Defendants employed a total of
19 28,203 hourly, nonexempt employees working in its California locations during the
20 putative class period of April 16, 2015 to the present. Declaration of Adam
21 Chmielewski in Support of Defendants’ Notice of Removal (“Chmielewski Decl.”) ¶ 2.
22 As such, both the Complaint and Defendants’ internal records demonstrate that there
23 are well over 100 putative class members in this case.

24 **C. Defendants Are Not Governmental Entities**

25 15. Under 28 U.S.C. § 1332(d)(5)(A), CAFA does not apply to class actions
26 where “primary defendants are States, State officials, or other governmental entities
27 against whom the district court may be foreclosed from ordering relief.”

28 16. Defendants are corporations, not state, state official,

1 or other government entity exempt from CAFA. Declaration of Stacia Jones in Support
2 of Defendants' Notice of Removal ("Jones Decl.") ¶ 2.

3 **D. There Is Diversity Between At Least One Class Member and One**
4 **Defendant**

5 17. CAFA's minimal diversity requirement is satisfied, *inter alia*, when "any
6 member of a class of plaintiffs is a citizen of a State different from any defendant."
7 28 U.S.C. §§ 1332(d)(2)(A), 1453(b). In a class action, only the citizenship of the
8 named parties is considered for diversity purposes, and not the citizenship of the class
9 members. *Snyder v. Harris*, 394 U.S. 332, 340 (1969). Additionally, for removal
10 purposes, diversity must exist both at the time the action was commenced in state court
11 and at the time of removal. *See Strotek Corp. v. Air Trans. Ass'n of Am.*,
12 300 F.3d 1129, 1130-1131 (9th Cir. 2002). Minimal diversity of citizenship exists here
13 because Plaintiff and Defendants are citizens of different states.

14 18. For diversity purposes, a person is a "citizen" of the state in which she is
15 domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.
16 1983); *see also Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)
17 (confirming that person's domicile is the place she resides with the intention to remain).
18 Furthermore, allegations of residency in a state court complaint create a rebuttable
19 presumption of domicile supporting diversity of citizenship. *Lew v. Moss*, 797 F.2d
20 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514,
21 519 (10th Cir. 1994) (allegation by party in state court complaint of residency "created
22 a presumption of continuing residence in [state] and put the burden of coming forward
23 with contrary evidence on the party seeking to prove otherwise"); *Smith v. Simmons*,
24 No. 1:05-CV-01187-OWW-GSA, 2008 WL 744709, at *7 (E.D. Cal. Mar. 18, 2008)
25 (finding a place of residence provides "'prima facie' case of domicile").

26 19. Plaintiff resides in California and has specifically alleged that she "was at
27 all times relevant to this action, a resident of Los Angeles, California." Complaint ¶ 6.
28 Defendants have thus established by a preponderance of the evidence that Plaintiff

1 resides and is domiciled in California, and is a citizen of California. *See id.*; *Lew*, 797
2 F.2d at 751; *Smith*, 2008 WL 744709, at *7.

3 20. Defendants are not citizens of California. “[A] corporation shall be
4 deemed to be a citizen of any State by which it has been incorporated and of the State
5 where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Defendants are
6 incorporated under the laws of the state of Ohio and Delaware, and all have their
7 principal place of business in Ohio. Jones Decl. ¶ 3.

8 21. The Supreme Court has explained that a corporation’s principal place of
9 business is determined under the “nerve center” test. *See Hertz Corp. v. Friend*, 599
10 U.S. 77, 80-81 (2010). Under the “nerve center” test, the principal place of business is
11 the state where “a corporation’s officers direct, control, and coordinate the corporation’s
12 activities.” *Id.* The Supreme Court further explained in *Hertz* that a corporation’s nerve
13 center “should normally be the place where the corporation maintains its headquarters”
14 and that a corporation’s nerve center is a “single place.” *Id.* at 93.

15 22. Under these criteria, Defendants’ principal places of business are all in
16 Ohio, where they maintain their corporate headquarters. Jones Decl. ¶ 2. Those
17 headquarters are the actual center of direction, control, and coordination for the business
18 functions central to Defendants’ operations. *Id.*

19 23. The presence of Doe defendants in this case has no bearing on diversity
20 with respect to removal. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil
21 action is removable on the basis of the jurisdiction under section 1332(a) of this title,
22 the citizenship of defendants sued under fictitious names shall be disregarded.”).
23 Accordingly, the named Plaintiff is a citizen of a state (California) different from
24 Defendants (Ohio and Delaware), and diversity exists for purposes of CAFA
25 jurisdiction. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1453.

1 **E. The Amount In Controversy Exceeds \$5,000,000¹**

2 24. This Court has jurisdiction under CAFA, which authorizes the removal of
3 class actions in which, among the other factors mentioned above, the amount in
4 controversy for all putative class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

5 25. Plaintiff does not allege the amount in controversy in the Complaint. In
6 her Prayer for Relief, Plaintiff seeks compensatory damages, including unpaid
7 compensation for unpaid wages and penalties, interest, attorneys’ fees, and costs.
8 Complaint, Prayer for Relief. When the plaintiff’s complaint does not state the amount
9 in controversy, the defendant’s notice of removal may do so.

10 26. The removal statute requires a defendant seeking to remove a case to
11 federal court to file a notice “containing a short and plain statement of the grounds for
12 removal.” 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee Basin Operating*
13 *Co. v. Owens*, 135 S. Ct. 547 (2014), recognized that “as specified in § 1446(a), a
14 defendant’s notice of removal need include only a plausible allegation that the amount
15 in controversy exceeds the jurisdictional threshold.” *Id.* at 554. Only if the plaintiff
16 contests or the court questions the allegations of the notice of removal is supporting
17 evidence required. *Id.* Otherwise, “the amount-in-controversy allegation of a defendant
18 seeking federal-court adjudication should be accepted” just as a plaintiff’s amount-in-
19 controversy allegation is accepted when a plaintiff invokes federal court jurisdiction.
20 *Id.* at 549-50.

21 27. Defendants deny the validity and merit of Plaintiff’s claims, the legal
22 theories they are based upon, and Plaintiff’s request for monetary and other relief.
23 For purposes of removal, however, and without conceding that Plaintiff or the putative
24 class is entitled to any damages or penalties whatsoever, it is apparent that the
25 aggregated claims of the putative class establishes, by a preponderance of evidence, that

26 _____
27 ¹ The alleged damages calculations contained herein are for purposes of removal only.
28 Defendants deny that Plaintiff or the putative class are entitled to any relief whatsoever
and expressly reserve the right to challenge Plaintiff’s alleged damages in this case.

1 the amount in controversy exceeds the jurisdictional minimum of \$5,000,000.

2 28. For purposes of determining whether a defendant has satisfied the amount
3 in controversy requirement, the Court must presume that the Plaintiff will prevail on
4 her claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*,
5 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F. 3d
6 1092, 1096 (11th Cir. 1994) (stating that the amount in controversy analysis presumes
7 that ““plaintiff prevails on liability””) (other internal citation omitted).
8 The ultimate inquiry is what amount is put “in controversy” by plaintiff’s complaint,
9 not what defendant might actually owe. *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d
10 982, 986 (S.D. Cal. 2005); accord *Ibarra v. Manheim Inv., Inc.* 775 F.3d 1193, 1198
11 n.1 (9th Cir. 2015) (explaining that even when the court is persuaded the amount in
12 controversy exceeds \$5,000,000, defendants are still free to challenge the actual amount
13 of damages at trial because they are only estimating the amount in controversy).

14 29. Plaintiff’s complaint alleges that she “and Class Members performed work
15 prior to the start of their scheduled shifts and also at the end of their scheduled shifts
16 (“off-the-clock”),” “were not compensated for such work as Defendants would round
17 their times to only reflect their scheduled start or end times,” “were caused to endure
18 unprovided, untimely, interrupted meal periods for many of the work days such
19 employees worked more than six hours, were not provided uninterrupted second meal
20 periods of at least thirty minutes for any work days such employees worked more than
21 ten hours,” “would experience at least 2 late lunches a week,” were consistently required
22 to work in excess of four hours (or major fraction thereof) without receiving lawful ten
23 (10) minute rest periods . . . which occurred at a minimum 2-3 times per week . . . [and]
24 were not provided with one hour wages in lieu thereof.” Complaint ¶¶ 29, 32-34.
25 Plaintiff further alleges that Defendants failed to pay Plaintiff and putative class
26 members their wages due upon discharge (Complaint ¶ 66), failed to provide accurate
27 wage statements (Complaint ¶¶ 71-72) and that “Defendants failed to accurately
28 account for bonuses into Plaintiff’s and Class Members’ regular rates of pay for

1 overtime calculation purposes.” Complaint ¶ 31. Plaintiff’s complaint further alleges
 2 that Defendants failed to reimburse her and the putative class members for business
 3 expenses incurred, including “use of personal cell phones as Defendants managements
 4 would call and text Plaintiff and Class Members,” and “use of personal vehicles to travel
 5 to Defendants’ various retail locations.” Complaint ¶ 37.

6 30. In addition, Plaintiff alleges a cause of action for violation of the Unfair
 7 Competition Law (“UCL”), Business and Professions Code § 17200, *et seq.* Complaint
 8 ¶ 85. Alleging a UCL violation may extend the statute of limitations for many of
 9 Plaintiff’s and the putative class’ claims from three to four years from the filing of the
 10 Complaint, which Defendants anticipate Plaintiff will argue extends the statute of
 11 limitations back to May 8, 2015. *See* Cal. Bus. & Prof. Code § 17208; *Cortez v.*
 12 *Purolater Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute
 13 of limitations for restitution of wages under the UCL).

14 **1. Amount In Controversy – Plaintiff’s Minimum Wage and**
 15 **Overtime Claim**

16 31. In her first cause of action, Plaintiff alleges that “Defendants [] failed to
 17 pay all wages and overtime owed to Plaintiff and Class Members for the work
 18 commenced prior to and after their scheduled shifts.”² Complaint ¶ 47. Specifically,
 19 Plaintiff alleges that she was instructed to “stop at the bank to get change/order change
 20 for the store’s cash registers . . . result[ing] in approximately 1 hour to 1.5 hours of off
 21 the clock work,” “send[] emails and status updates to the District Manager on how the
 22 store performed that day, how Floorsets turned out, or report any issues to the District
 23 Manager,” “respond to group texts or calls with Defendants’ General Manager and Store
 24 Manager regarding the status of the store, or responding to employees’ questions via
 25 text or phone calls.” Complaint ¶¶ 29-30. Therefore, Plaintiff alleges that she and

26 ² Plaintiff also alleges that Defendants failed to properly calculate the overtime rate
 27 for her and the putative class members. At this time, Defendants have not calculated
 28 the amount in controversy for this claim, but reserve the right to do so in any future
 motion practice. Nonetheless, this claim necessarily increases the amount in
 controversy.

1 putative class members are entitled to recover their unpaid wages under Labor Code §§
2 1194 and 1197.1.

3 Assuming conservatively that Plaintiff and the putative class seek only one hour
4 of wages for off-the-clock work per workweek, at the California 2015 state minimum
5 wage of \$9.00,³ Plaintiff's minimum wage claim would equal **\$6,245,460**.⁴ In
6 addition, Plaintiff could recover liquidated damages. Cal. Lab. Code §§ 1194.2(a)
7 ("In any action under Section [...] 1194, or 1197.1 to recover wages because of the
8 payment of a wage less than the minimum wage fixed by an order of the commission
9 or by statute, an employee shall be entitled to recover liquidated damages in an
10 amount equal to the wages unlawfully unpaid and interest thereon"). Adding in
11 liquidated damages, a conservative estimate of the amount in controversy for
12 Plaintiff's minimum wage claim is **\$12,490,920**,⁵ exclusive of interest.

13 **2. Amount in Controversy – Plaintiff's Meal Periods Claim**

14 32. Plaintiff's second cause of action alleges that Defendants failed to provide
15 Plaintiff and putative class members all compliant meal periods, and failed to pay meal
16 period premiums due in violation of California Labor Code sections 226.7 and 512 and
17 the applicable wage order. Complaint ¶¶ 52-57. Specifically, Plaintiff alleges that
18 "Plaintiff and Class Members were caused to endure unprovided, untimely, interrupted
19 meal periods for many of the work days such employees worked more than six hours,
20 were not provided uninterrupted second meal periods of at least thirty minutes for any
21 work days such employees worked more than ten hours" were not paid penalties in lieu
22 thereof, and "would experience *at least 2 late lunches a week*." Complaint ¶¶ 32-33,
23 emphasis added. Thus, Plaintiff seeks one additional hour of pay for each work day
24 that a compliant meal period was not provided, under Labor Code section 226.7.

25 _____
26 ³ Note that the California minimum wage increased to \$10.00 per hour in 2016,
27 \$10.50 per hour in 2017, and to \$11.00 in 2018, for employers with 26 employees or
28 more.

⁴ (\$9/hour minimum wage) x (1 hour) x (693,940 work weeks) = \$6,245,460.

⁵ (\$9/hour minimum wage) x (1 hour) x (693,940 work weeks) x 2 = \$12,490,920.

1 Complaint ¶ 57.

2 33. Assuming Plaintiff was to succeed in her claim by proving that, at a
3 minimum, putative class members were not provided two compliant meal breaks for
4 every week that they worked, and were not paid a meal break premium, the amount in
5 controversy for the meal break claim of the putative class would be **\$16,182,680.80**.⁶

6 **3. Amount in Controversy – Plaintiff’s Rest Breaks Claim**

7 34. Plaintiff’s fourth cause of action alleges that Defendants failed to provide
8 Plaintiff and putative class members all compliant rest breaks and failed to pay the full
9 rest break period premiums due in violation of California Labor Code sections 226.7
10 and the applicable wage order. Complaint ¶ 59-62. Specifically, Plaintiff alleges that
11 “Plaintiff and Class Members were consistently required to work in excess of four hours
12 (or major fraction thereof) without receiving lawful ten (10) minute rest periods . . .
13 which occurred at a minimum 2-3 times per week . . . [and] were not provided with one
14 hour wages in lieu thereof.” Complaint ¶ 34. By way of this claim, Plaintiff seeks one
15 additional hour of pay for each work day that a rest period was not provided, pursuant
16 to California Labor Code § 226.7. Complaint ¶ 62.

17 35. Assuming Plaintiff was to succeed in her claim in proving that, at a
18 minimum, putative class members were not provided two compliant rest breaks for
19 every week that they worked, and were not paid a break premium, the amount in
20 controversy for the rest break claim of the putative class would be **\$16,182,680.80**.⁷

21 **4. Amount in Controversy –Plaintiff’s Waiting Time Penalties**
22 **Claim**

23 36. In her fourth cause of action, Plaintiff seeks waiting time penalties
24 pursuant to California Labor Code sections 201, 202, and 203. Complaint ¶¶ 64-67.
25 The Labor Code’s penalty for failure to pay wages at termination is up to 30 days wages
26 for each employee. Cal. Lab. Code § 203(a).

27 _____
28 ⁶ (693,940 workweeks) x (2 days) x (Average hourly rate of \$11.66) = \$16,182,680.80

⁷ (693,940 workweeks) x (2 days) x (Average hourly rate of \$11.66) = \$16,182,680.80

1 37. At this time, Defendants have not calculated the amount in controversy for
2 this claim, which is not required to show that the amount in controversy exceeds the
3 jurisdictional minimum of \$5,000,000, but reserve the right to do so in any future
4 motion practice. Nonetheless, this claim necessarily increases the amount in
5 controversy.

6 **5. Amount in Controversy – Plaintiff’s Wage Statements**

7 38. In her fifth cause of action, Plaintiff alleges that Defendants failed to
8 furnish accurate wage statements. Complaint ¶¶ 69-75. Specifically, Plaintiff alleges
9 that Defendants “failed to accurately record all time worked. . . [and] failed to accurately
10 record the meal and rest period premiums owed per pay period.” Complaint ¶¶ 71-72.
11 Plaintiff alleges that she and the putative class members have been injured thereby, and
12 seeks penalties. Complaint ¶¶ 74-75.

13 39. Labor Code Section 226(e) provides for a statutory penalty for violations
14 of Labor Code section 226(a)’s wage statement requirements of \$50 or actual damages
15 per employee for the initial pay period in which a violation occurs and \$100 per
16 employee for each violation in a subsequent pay period, not exceeding an aggregate
17 amount of \$4,000 per employee. Cal. Labor Code § 226(a). The statutory period for
18 Labor Code section 226(e) penalties is one year. Cal. Code Civ. Proc. § 340.

19 40. Defendants pay their non-exempt employees biweekly. Chmielewski
20 Decl.”) ¶ 2. Approximately 10,372 employees were employed by Defendants during
21 the one year prior to the filing of the Complaint in this action, with 105,305 total pay
22 periods. *Id.* at ¶ 2. Therefore, the amount in controversy for Plaintiff’s wage statement
23 penalties claim is **\$10,011,900**.⁸

24 **6. Amount in Controversy – Plaintiff’s Business Expenses Claim**

25 41. In her sixth cause of action, Plaintiff and the putative class members seek
26 reimbursement for allegedly unpaid business expenses pursuant to California Labor
27

28 ⁸ (10,372 employees x \$50 initial violation) + (94,933 remaining pay periods [105,305 total – 10,372 initial violations] x \$100 violation) = \$10,011,900.

Code section 2802. Specifically, Plaintiff alleges that she and other putative class members “were not adequately reimbursed by Defendants for expenses related to all expenses incurred as results of their personal cell phone and personal vehicle usage.” Complaint ¶ 77. Plaintiff does not limit this claim in any fashion, for instance, by specifying the amount of such expenses or the frequency in which putative class members allegedly incurred them. As such, at this time, Defendants cannot calculate the amount in controversy for this claim, but reserve the right to do so in any future motion practice. Nonetheless, this claim necessarily increases the amount in controversy as Plaintiff is asserting that she and putative class members are owed reimbursement.

VII. SUMMARY

42. Removal of this action is therefore proper, as the aggregate value of Plaintiff’s class causes of actions are well in excess of the CAFA jurisdictional requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2). Based on Plaintiff’s allegations, as set forth in detail above, the amount in controversy under the complaint is, conservatively, \$54,868,181.60.

Plaintiff’s Alleged Claim	Amount in Controversy Conservative Estimate
Minimum Wage	\$12,490,920.00
Overtime	Unknown
Meal Periods	\$16,182,680.80
Rest Breaks	\$16,182,680.80
Waiting Time Penalties	Unknown
Wage Statements	\$10,011,900.00
Business Expenses	Unknown
Total Amount in Controversy	At least \$54,868,181.60

1
2 43. Accordingly, although Defendants deny Plaintiff's claims as alleged in the
3 Complaint, the jurisdictional minimum is satisfied for purposes of determining the
4 amount in controversy, as it exceeds the \$5,000,000 threshold required under CAFA.

5 WHEREFORE, Defendants hereby remove this action from the Superior Court of
6 the State of California, County of Orange, to the United States District Court for the
7 Central District of California.

8 Dated: July 31, 2019

9
10 /s/ Rachael Lavi
11 EMILY T. PATAJO
12 RACHAEL LAVI
13 CASSIDY C. VEAL
14 LITTLER MENDELSON, P.C.
15 Attorneys for Defendants
16 ABERCROMBIE & FITCH CO.,
17 ABERCROMBIE & FITCH STORES,
18 INC. AND HOLLISTER CO.
19
20
21
22
23
24
25
26
27
28

1 EMILY T. PATAJO, Bar No. 250212
epatajo@littler.com
2 RACHAEL LAVI, Bar No. 294443
rlavi@littler.com
3 CASSIDY C. VEAL, Bar No. 323899
cveal@littler.com
4 LITTLER MENDELSON, P.C.
2049 Century Park East
5 5th Floor
Los Angeles, CA 90067.3107
6 Telephone: 310.553.0308
Facsimile: 310.553.5583
7

8 Attorneys for Defendants
ABERCROMBIE & FITCH CO.,
9 ABERCROMBIE & FITCH STORES, INC.
AND HOLLISTER CO.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 JASMAINE SHAW,
14 Plaintiff,

15 v.

16 ABERCROMBIE & FITCH CO., an
Ohio Corporation, ABERCROMBIE &
17 FITCH STORES, INC., an Ohio
Corporation AND HOLLISTER CO.,
18 an Ohio Corporation,
19 Defendants.
20

Case No.

**DECLARATION OF RACHAEL
LAVI IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT PURSUANT TO
28 U.S.C. §§ 1332, 1441 AND 1446**

Complaint filed: May 8, 2019
(Orange County Superior Court, Case
No. 30-2019-01068593-CU-OE-CXC)

Trial Date: None Set

DECLARATION OF RACHAEL LAVI

I, Rachael Lavi, declare as follows:

1. I am an associate with the law firm of Littler Mendelson, a Professional Corporation, counsel of record for Defendants Abercrombie & Fitch Co., Abercrombie & Fitch Stores, Inc., and Hollister Co. (“Defendants”) in this action. I am duly licensed to practice law in the State of California and am one of the attorneys responsible for representing Defendants in this action. I make this Declaration in support of Defendants’ Notice of Removal of Civil Action to Federal Court Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 (“Notice of Removal”). All of the information contained herein is based on my personal and first-hand knowledge unless otherwise indicated, and, if called and sworn as a witness, I could and would competently testify thereto.

2. True and correct copies of the documents served on Defendants on July 1, 2019, including the Summons, Complaint, and Civil Case Cover Sheet, through Defendants’ agent for service of process, CT Corporation, are attached hereto as **Exhibit A**.

3. A true and correct copy of the Answer filed by Defendants on July 30, 2019, is attached hereto as **Exhibit B**.

4. Other than the documents attached as **Exhibits A** and **B**, I am not aware of any further proceedings or filings regarding this case in the Superior Court of the State of California, County of Orange. No other party is named or has been validly served as of the date of this Notice of Removal.

5. Contemporaneously with the filing of Defendants’ Notice of Removal in the United States District Court for the Central District of California, I have provided written notice of such filing to Plaintiff Jasmine Shaw’s counsel of record: James R. Hawkins, Gregory Mauro, and Michael Calvo of James Hawkins APLC, 9880 Research Drive, Suite 800, Irvine, CA 92618. In addition, a copy of Defendants’ Notice of Removal will be filed with the Clerk of the Superior Court of the State of California, County of Orange.

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 Executed in Los Angeles, CA on this 31st day of July, 2019.

4
5 /s/ Rachael Lavi
6 RACHAEL LAVI

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 JAMES HAWKINS APLC
2 James R. Hawkins, Esq. (#192925)
3 Gregory Mauro, Esq. (#222239)
4 Michael Calvo, Esq. (#314986)
5 9880 Research Drive, Suite 800
6 Irvine, CA 92618
7 Tel.: (949) 387-7200
8 Fax: (949) 387-6676
9 Email: James@jameshawkinsaplc.com
10 Email: Greg@jameshawkinsaplc.com
11 Email: Michael@jameshawkinsaplc.com

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/08/2019 at 03:00:48 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

12 Attorneys for Plaintiff JASMAINE SHAW,
13 individually and on behalf of all others similarly situated

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

JASMAINE SHAW, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

ABERCROMBIE & FITCH CO., an Ohio
Corporation; ABERCROMBIE & FITCH
STORES, INC.; an Ohio Corporation;
HOLLISTER, CO., an Ohio Corporation, and
DOES 1-50, inclusive,

Defendants.

CASE NO.: 30-2019-01068593-CU-OE-CXC

Assigned For All Purposes To:

Judge: Judge Peter Wilson

Dept.: CX102

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE §382**

COMPLAINT FOR:

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 7-2001
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
7. Violation of Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff JASMAINE SHAW (“Plaintiff”), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby files this
3 Complaint against Defendants ABERCROMBIE & FITCH CO.; ABERCROMBIE & FITCH
4 STORES, INC.; HOLLISTER, CO.; and DOES 1-50, inclusive (collectively “Defendants”) and
5 alleges on information and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

10 2. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
12 except those given by statute to other courts. The statutes under which this action is brought do
13 not give jurisdiction to any other court.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders 7-2001, CCP, California Civil Code
24 (“CC”) and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or
27 omissions alleged herein took place in this County.

28 ///

1 **II. PARTIES**

2 6. Plaintiff, JASMAINE SHAW, was at all times relevant to this action, a resident
3 of Los Angeles, California. Plaintiff was employed by Defendants in approximately 2008 as a
4 Non-Exempt Employee working as a Brand Representative and Assistant Manager and worked
5 during the liability period at both ABERCROMBIE & FITCH and HOLLISTER, CO., until her
6 separation from Defendants' employ in approximately December 2018. Plaintiff worked in several
7 of Defendants' California retail locations, such as the Del Amo Fashion Center, Westfield Culver
8 City, and the Westside Pavilion.

9 7. Defendants ABERCROMBIE & FITCH CO., own and operate
10 ABERCROMBIE & FITCH STORES, INC., and HOLLISTER, CO. Defendants operate as a
11 chain retail and casual clothing apparel businesses throughout the United States including
12 throughout California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who
13 work or have worked for Defendants over the last four years.

14 8. Other than identified herein, Plaintiff is unaware of the true names, capacities,
15 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
16 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
17 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
18 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
19 are ascertained.

20 9. Plaintiff is informed and believes and thereon alleges that each defendant, directly
21 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
22 Class, and exercised control over their wages, hours, and working conditions. Plaintiff is
23 informed and believes and thereon alleges that each Defendant acted in all respects pertinent to
24 this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy
25 in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other
26 defendants.

27 **III. CLASS ACTION ALLEGATION**

28 10. Plaintiff brings this action individually and on behalf of all others similarly

1 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class
2 are defined as follows:

3 All persons who have been employed by Defendants as Non-Exempt Employees or
4 equivalent positions, however titled, in the state of California within four (4) years from
5 the filing of the Complaint in this action until its resolution. (collectively referred to as the
6 “Class” or “Plaintiff’s Class” or “Class Members”).

7 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as
8 follows:

9 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
10 excess of six or ten hours in a work day but were not provided with a timely, uninterrupted,
11 duty-free thirty-minute meal period (hereinafter collectively referred to as the “Meal
12 Period Subclass”).

13 **Sub-Class 2:** All Class Members who are or were employed by Defendants who worked in
14 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
15 permitted a rest period (hereinafter collectively referred to as the “Rest Period Subclass”).

16 **Sub-Class 3:** All Class Members who are or were employed by Defendants who worked in
17 excess of ten hours in a work day but were not authorized and permitted a rest period
18 (hereinafter collectively referred to as the “Third Rest Period Subclass”).

19 **Sub-Class 4:** All Class Members who are or were employed by Defendants at any time
20 between May 2018 and the present and who received wage statements from Defendant
21 (hereinafter collectively referred to as the “Wage Statement Subclass”).

22 **Sub-Class 5:** All Class Members who have been employed by Defendants at any time
23 between May 2016 and the present and have separated their employment (hereinafter
24 collectively referred to as the “Waiting Time Penalty Subclass”).

25 **Sub-Class 6:** All Class Members who are or were employed by Defendants and subject to
26 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair
27 Business Practice Subclass”).

28 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
applicable laws to amend or modify the class definition with respect to issues or in any other
ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

13. The term “Class” includes Plaintiff and all members of the Class and each of the
Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in

1 this complaint.

2 14. There is a well-defined community of interest in the litigation and the proposed
3 Class is easily ascertainable through the records Defendants are required to keep.

4 15. Numerosity. The members of the Class are so numerous that individual joinder
5 of all of them as plaintiffs is impracticable. While the exact number of the Class members is
6 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
7 are at least 100 (one hundred) Class members.

8 16. Commonality. Common questions of law and fact exist as to all Class members
9 and predominate over any questions that affect only individual members of the Class. These
10 common questions include, but are not limited to:

11 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff
12 and Class Members for all hours worked;

13 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
14 Members;

15 iii. Whether Defendants violated Labor Code sections 226.7, 512, and
16 applicable IWC Wage Orders 7-2001, by failing to authorize and permit daily rest periods to
17 Plaintiff and Class Members for every four hours or major fraction thereof worked and failing to
18 compensate said employees one hours wages in lieu of rest periods;

19 iv. Whether Defendants violated Labor Code sections 226.7, 512 and
20 applicable IWC Wage Orders 7-2001, by failing to provide a meal period to Plaintiff and Class
21 Members on days they worked work periods in excess of six and 10 hours and failing to
22 compensate said employees one hour wages in lieu of meal periods;

23 v. Whether Defendants failed to maintain accurate time record including
24 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
25 the applicable IWC Wage Orders 7-2001;

26 vi. Whether Defendants provided accurate itemized wage statements pursuant
27 to Labor Code section 226.
28

1 vii. Whether Defendants violated Business and Professions Code and Labor
2 Code sections 201-202, 510, 226, 226.7, 266.3, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and
3 applicable IWC Wage Orders 7-2001 which violation constitutes a violation of fundamental public
4 policy; and

5 viii. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
6 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

7 ix. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
8 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
9 to Labor Code sections 558, 1194 and 1197.

10 17. Typicality. Plaintiff's claims herein alleged are typical of those claims which
11 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
12 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
13 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
14 of and caused by Defendants' common course of conduct in violation of California laws,
15 regulations, and statutes as alleged herein.

16 18. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
17 interests of each member of the Class and/or Subclass with whom she has a well defined
18 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
19 obligation to make known to the Court any relationships, conflicts, or differences with any
20 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
21 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
22 settlement and experienced in handling such matters. Other former and current employees of
23 Defendants may also serve as representatives of the Class and Subclass if needed.

24 19. Superiority. A class action is superior to other available means for the fair and
25 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
26 court. Class action treatment will allow a large number of similarly situated persons to prosecute
27 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
28 duplication of effort and expense that numerous individual actions would require. The damages

1 Members based upon an hourly rate.

2 27. On information and belief, during the relevant time frame, Plaintiff and Class
3 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
4 week.

5 28. On information and belief, during the relevant time frame, Plaintiff and Class
6 Members typically worked five days a week. During their scheduled work days, Plaintiff and
7 Class Members would either work the opening shift which began at 9:00 a.m. and concluded at
8 6:00 p.m. or the closing shift which began at 1:00 p.m. and concluded at 10:00 p.m. Plaintiff and
9 Class Members also worked bi-monthly over night schedules when updating all the merchandise
10 in the stores (“Floorsets”). These Floorsets would take start before the store closed until the time
11 the store reopened, which would often mean Plaintiff and Class Members would work 10-12 hours
12 or more during this time, depending at what time of the day Plaintiff and Class Members were
13 scheduled to come in.

14 29. Plaintiff is informed and believes that Plaintiff and Class Members were not
15 compensated for all time worked as Plaintiff and Class Members performed worked prior to the
16 start of their scheduled shifts and also at the end of their scheduled shifts (“off-the-clock”).
17 Plaintiff and Class Members were not compensated for such work as Defendants would round
18 their times to only reflect their scheduled start or end times. For instance, if Plaintiff was
19 scheduled for the opening shift, Plaintiff would be instructed by the Store Manager or the General
20 Manager to stop at Defendants’ other retail locations on her way to work to pick up supplies for
21 her store or to stop at the bank to get change/order change for the store’s cash registers. This off-
22 the-clock work, which was delegated to Plaintiff by the Store Manager or General Manager would
23 result in approximately 1 hour to 1.5 hours of off the clock work, which Defendants would not
24 account for. Further Plaintiff and Class Members also performed off-the-clock work after having
25 clocked out for the day, due to the District being tight on hours. Such work would entail sending
26 emails and status updates to the District Manager on how the store performed that day, how
27 Floorsets turned out, or report any issues to the District Manager. Even though Plaintiff and Class
28 Members were performing such work, Defendants failed to account for such time. Defendants’

1 policy resulted in Plaintiff and the Class Member being subjected to Defendants' unlawful
2 rounding policy. Defendants' implemented unlawful rounding policy consistently resulted in a
3 failure to pay employees for the time worked while under the control of Defendants. Defendants'
4 rounding policy over time resulted on a large and disproportionate underpayment of wages
5 including overtime wages to Plaintiff and Class Members.

6 30. Defendants also failed to compensate Plaintiff and Class Members for off-the-clock
7 work performed during Plaintiff's and Class Member's scheduled days off. Such off-the-clock
8 work included responding to group texts or calls with Defendants' General Manager and Store
9 Manager regarding the status of the store, or responding to employees' questions via text or phone
10 calls. Despite Defendants knowing such off-the-clock was occurring, Defendants failed to
11 compensate Plaintiff and Class Members accordingly.

12 31. On information and belief, Defendants also failed to accurately account for bonuses
13 into Plaintiff's and Class Members' regular rates of pay for overtime calculation purposes.

14 32. Plaintiff is informed and believes that Plaintiff and Class Members were caused to
15 endure unprovided, untimely, interrupted meal periods of at least thirty (30) minutes for many of
16 the work days such employees worked more than six hours (6) hours, were not provided
17 uninterrupted second meal periods of at least thirty (30) minutes for any work days such
18 employees worked more than ten (10) hours, and were not paid one (1) hour of wages by
19 Defendants in lieu thereof, all in violation of the California Labor Code.

20 33. Plaintiff is informed and believes that Plaintiff and Class Members were regularly
21 required to work in excess of six (6) hours per day without Defendants providing them a timely,
22 uninterrupted (30) minute meal period as mandated under the California Labor Code and the
23 implementing rules and regulations of the IWC California Wage Orders. For instance, Plaintiff
24 and Class Members would experience at least 2 late lunches a week due to the customer volume in
25 the store or due to the lack of coverage for Plaintiff and Class Members to take timely lunch
26 breaks. Further, Defendants failed to provide Plaintiff and Class Members with all required lunch
27 breaks no matter how long Plaintiff and Class Members worked, as they were only allotted a 1
28 hour break in total during their entire shifts. Thus, even if Plaintiff and Class Members worked 10-

1 12 hours in a day during Floorsets, they would only receive one lunch, and would often have to
2 work through their lunches during these times to finish the Floorset on time. As a result Plaintiff
3 and Class Members were not provided lawful meal periods and were not provided with one hour
4 of wages in lieu thereof under Defendants' policies and practices, which included work schedules
5 placed upon the Class Members from Defendants' management and supervisors and Defendants'
6 implementation of a shift schedule and workload requirements that denied Class Members all of
7 their authorized meal periods, including second meal periods on shifts when they worked over ten
8 (10) hours in a day. Plaintiff and the Class did not waive any of their authorized and required meal
9 periods, nor did they receive one hour of regular pay for each day Defendants failed to provide a
10 lawful meal period.

11 34. Plaintiff is informed and believes that during the liability period, Plaintiff and Class
12 Members were consistently required to work in excess of four (4) hours (or major fraction thereof)
13 without receiving lawful ten (10) minute rest periods. On information and belief, Plaintiff and
14 Class Members were also subject to late rest breaks due to the customer volume or lack of
15 coverage for Plaintiff and Class Members to take a required rest break, which occurred at a
16 minimum 2-3 times a week. Further, during Floorsets, Plaintiff and Class Members would only
17 receive one rest break, despite having worked 10-12 hours or more during that shift, which
18 Plaintiff and Class Members also worked through in order to finish the Floorset on time. Despite
19 these occurrences, Plaintiff and Class Members were not provided with one hour wages in lieu
20 thereof. Ultimately, Defendants' policies and practices included Defendants' implementation of a
21 work schedule and workload requirements that denied and failed to provide the Plaintiff and the
22 Class all of their authorized rest periods, including first rest periods of at least ten (10) minutes for
23 every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and second rest
24 period of at least ten (10) minutes for every shift worked greater than six (6) hours, and a third rest
25 period of at least ten (10) minutes for every shift worked in excess of ten (10) hours.

26 35. Defendants did not fully compensate Plaintiff and the Class for hourly wages
27 during the liability period, including by virtue of the fact that Defendants did not compensate
28 Plaintiff and Class Members with one extra hour of pay for Defendants' failure to provide such

1 Non-Exempt Employees with each of their authorized rest periods and meal periods during the rest
2 and meal period liability period.

3 36. Upon information and belief, Defendants failed to provide accurate itemized wage
4 statements to Plaintiff and Class Members as the wage statements provided failed to accurately
5 account for all hours worked. Further, Defendants failed to provide accurate wage statements as
6 Defendants' wage statements do not identify premium pay as required by Labor Code § 226.

7 37. Upon information and belief, Defendants failed to adequately reimburse Plaintiff
8 and Class Members for business expenditures incurred for the use of personal cellphones as
9 Defendants managements would call and text Plaintiff and Class Members to discuss the store or
10 any up and coming changes to the store's merchandise or layout. Defendants further failed to
11 reimburse Plaintiff and Class Members for their use of personal vehicles to travel to Defendants'
12 various retail locations to gather supplies or to travel to the bank to do "bank runs", at the specific
13 request and direction of Defendants' Management. Such business expenditures incurred were
14 incurred in direct consequence of the discharge of Plaintiff's and Class Members' duties pursuant
15 to Labor Code § 2802.

16 38. Upon information and belief, Defendants knew and or should have known that it is
17 improper to implement policies and commit unlawful acts such as:

18 (a) requiring employees to work four (4) hours or a major fraction thereof without
19 being provided a minimum ten (10) minute rest period and without compensating the employees
20 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
21 rest period was not provided;

22 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
23 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
24 and without compensating employees with one (1) hour of pay at the regular rate of compensation
25 for each workday that such a meal period was not provided;

26 (c) failing to provide accurate itemized wage statements;

27 (d) failing to timely pay Plaintiff and Class Members;

28 (e) failing to reimburse Plaintiff and Class Members business expenses incurred; and

1 (f) conducting and engaging in unfair business practices.

2 39. In addition to the violations above, and on information and belief, Defendants knew
3 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein and
4 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
5 recklessly, and/or intentionally failed to do so.

6 40. Plaintiff and Class Members they seek to represent are covered by, and Defendants
7 are required to comply with, applicable California Labor Codes, Industrial Welfare Commission
8 Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable
9 provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

12 **(Against All Defendants)**

13 41. Plaintiff incorporates and re-alleges each and every allegation contained above as
14 though fully set forth herein.

15 42. At all times relevant, the IWC wage orders applicable to Plaintiff’s and the Class
16 require employers to pay its employees for each hour worked at least minimum wage. “Hours
17 worked” means the time during which an employee is subject to the control of an employer, and
18 includes all the time the employee is suffered or permitted to work, whether or not required to do
19 so, and in the case of an employee who is required to reside on the employment premises, that
20 time spent carrying out assigned duties shall be counted as hours worked.

21 43. At all relevant times, Labor Code §1197 provides that the minimum wage for
22 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
23 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
24 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
25 worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff
26 and Class Members’ employment by Defendants provided that employees working for more than
27 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
28 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight

1 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
2 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

3 44. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons
4 acting individually as an officer, agent, or employee of another person, who pays or causes to be
5 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
6 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
7 damages payable to the employee, and any applicable penalties pursuant to Section 203.

8 45. Labor Code §510 codifies the right to overtime compensation at the rate of one and
9 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
10 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
11 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
12 seventh day of work in a particular work week.

13 46. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
14 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
15 et. seq. and the Labor Code.

16 47. At all times relevant, Plaintiff and Class Members consistently worked in excess of
17 eight (8) hours in a day and/or forty (40) hours in a week as a result of the off-the-clock work
18 performed as discussed above. At all times relevant, Defendants also failed to pay all wages and
19 overtime owed to Plaintiff and Class Members for the work commenced prior to and after their
20 scheduled shifts due to the Defendants’ unlawful rounding policies.

21 48. Defendants further failed pay all overtime wages owed as Defendants’ failed to
22 calculate bonuses into the regular rate of pay for overtime purposes.

23 49. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and
24 have failed to pay Plaintiff and Class Members the overtime wages owed.

25 50. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
26 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
27 attorneys’ fees.

28 ///

1 ///

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

4 **(Against All Defendants)**

5 51. Plaintiff incorporates and re-alleges each and every allegation contained above as
6 though fully set forth herein.

7 52. Pursuant to Labor Code §512, no employer shall employ an employee for a work
8 period of more than five (5) hours without providing a meal break of not less than thirty (30)
9 minutes in which the employee is relieved of all of his or her duties. An employer may not
10 employ an employee for a work period of more than ten (10) hours per day without providing the
11 employee with a second meal period of not less than thirty (30) minutes, except that if the total
12 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
13 consent of the employer and the employee only if the first meal period was not waived.

14 53. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
15 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
16 the work of the employee must prevent an employee from being relieved of all duties relating to
17 his or her work for the employer and the employees must consent in writing to the "on duty" meal
18 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
19 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
20 such that they were prevented from being relieved of all duties. Despite the requirements of the
21 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
22 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
23 their statutorily authorized meal periods.

24 54. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
25 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
26 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
27 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
28 the other Class Members have been damaged in an amount according to proof at time of trial.

1 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
2 minutes net rest time per four (4) hours worked or major fraction thereof... Authorized rest period
3 time shall be counted as hours worked, for which there shall be no deduction from wages.” Labor
4 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
5 mandated by an applicable order of the IWC.

6 60. Defendants were required to authorize and permit employees such as Plaintiff and
7 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
8 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.
9 Despite said requirements of the IWC wage orders applicable to Plaintiff’s and Class Members’
10 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
11 Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major
12 fraction thereof.

13 61. On information and belief Defendants created a working environment in which
14 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
15 and/or work related demands placed upon them by Defendants as well as a lack of sufficient
16 staffing to meet the needs of Defendants’ business as discussed above. On information and belief,
17 Defendants implemented a policy and practice which resulted in systematic and class-wide
18 violations of the Labor Code. On information and belief, Defendants’ violations have been
19 widespread throughout the liability period.

20 62. As a proximate result of the aforementioned violations, Plaintiff and Class
21 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
22 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
23 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
24 interest and penalties thereon, attorneys' fees, and costs.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PAY TIMELY PAY WAGES**

27 **(Against All Defendants)**

28 63. Plaintiff incorporates and re-alleges each and every allegation contained above as

1 though fully set forth herein.

2 64. Plaintiff incorporates and re-alleges each and every allegation contained above as
3 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an
4 employee to pay compensation due and owing to said employee immediately upon discharge and
5 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
6 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
7 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
8 is entitled to his or her wages on their last day of work.

9 65. Labor Code §203 provides that if an employer willfully fails to pay compensation
10 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
11 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

12 66. During the relevant time period, Defendants willfully failed and refused, and
13 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
14 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
15 leaving Defendants' employ. These wages include regular and overtime.

16 67. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt
17 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
18 according to proof at the time of trial.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(Against All Defendants)**

22 68. Plaintiff incorporates and re-alleges each and every allegation contained above as
23 though fully set forth herein.

24 69. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
25 statements all deductions from payment of wages and to accurately report total hours worked by
26 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
27 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
28 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

1 and Class Members' personal cell phones and vehicles is a common occurrence, one in which
2 Plaintiff and Class Members have not be reimbursed for. Despite these realities of the job,
3 Defendants failed to provide reimbursements for the use of personal cell phones and the use of
4 personal vehicles necessary to carry out Plaintiff's and Class Members' job duties.

5 78. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
6 implied, made by any employee to waive the benefits of this article or any part thereof is null and
7 void, and this article shall not deprive any employee or his or her personal representative of any
8 right or remedy to which he is entitled under the laws of this State.

9 79. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
10 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
11 the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
12 pursuant to Labor Code §§ 226, and 2802.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

15 **(Against All Defendants)**

16 80. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 81. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
19 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
20 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of the California Code of Civil Procedure §1021.5.

22 82. Defendants' policies, activities, and actions as alleged herein, are violations of
23 California law and constitute unlawful business acts and practices in violation of California
24 Business and Professions Code §§17200, et seq.

25 83. A violation of California Business and Professions Code §§17200, et seq., may be
26 predicated on the violation of any state or federal law. Defendants' policy of failing to provide
27 accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods
28 and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not

1 provided or provided outside of the required time frames, violates Labor Code § 226, §512, and
2 §226.7 and applicable IWC Wage Orders and California Code of Regulations.

3 84. Plaintiff and Class Members have been personally aggrieved by Defendants'
4 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
5 property.

6 85. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
7 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
8 during a period that commences four (4) years prior to the filing of this complaint; an award of
9 attorneys' fees, interest; and an award of costs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

12 Class Certification

- 13 1. That this action be certified as a class action;
14 2. That Plaintiff be appointed as the representative of the Class;
15 3. That Plaintiff be appointed as the representative of the Subclass; and
16 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass..

17 On the First Cause of Action

- 18 1. For compensatory damages equal to the unpaid balance of minimum wage
19 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
20 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
21 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
22 interest thereon pursuant to Labor Code §§ 1194.2, 558;
23 4. For such other and further relief as the Court deems proper.

24 On the Second Cause of Action

- 25 1. For one (1) hour of premium pay for each day in which a required meal period was
26 not provided or not provided in a timely manner; and
27 2. For such other and further relief as the Court deems proper.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On the Third Cause of Action

1. For one (1) hour of premium pay for each day in which a required rest period was not authorized or permitted; and
2. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

1. For statutory penalties pursuant to Labor Code §203;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For statutory penalties pursuant to Labor Code §226;
2. For interest for wages untimely paid;
3. For penalties pursuant to Labor Code §266.3; and
4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. For statutory penalties pursuant to Labor Code §2802;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and Class Members for their past failure to provide accurate itemized wage statements, pay wages, premium wages for meal and/or rest periods, that were not provided as described herein to Plaintiff and Class Members over the last four (4) years in an amount according to proof;
2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;
3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: May 8, 2019

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
Attorneys for Plaintiff JASMAINE SHAW,
individually and on behalf of all others
similarly situated.

1 EMILY T. PATAJO, Bar No. 250212
epatajo@littler.com
2 RACHAEL LAVI, Bar No. 294443
rlavi@littler.com
3 CASSIDY C. VEAL, Bar No. 323899
cveal@littler.com
4 LITTLER MENDELSON, P.C.
2049 Century Park East
5 5th Floor
Los Angeles, CA 90067.3107
6 Telephone: 310.553.0308
Fax No.: 310.553.5583
7

8 Attorneys for Defendants
ABERCROMBIE & FITCH CO., ABERCROMBIE
& FITCH STORES, INC. AND HOLLISTER, CO.
9

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ORANGE

12 JASMAINE SHAW,

13 Plaintiff,

14 v.

15 ABERCROMBIE & FITCH CO., an Ohio
Corporation; ABERCROMBIE & FITCH
16 STORES, INC.; and Ohio Corporation;
HOLLISTER CO. an Ohio Corporation,
17 and DOES 1-50, inclusive,

18 Defendants.
19

Case No. 30-2019-01068593-CU-OE-CXC

**DEFENDANTS' ANSWER TO
PLAINTIFF'S UNVERIFIED CLASS
ACTION COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO JUDGE
PETER WILSON, DEPT. CX102

Complaint Filed: May 8, 2019
Trial Date: None Set

EXHIBIT B

1 Defendants ABERCROMBIE & FITCH CO., ABERCROMBIE & FITCH STORES, INC.,
2 and HOLLISTER CO (“Defendants”) hereby answers the unverified Class Action Complaint
3 (“Complaint”) of Plaintiff JASMAINE SHAW (“Plaintiff”) as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d), Defendants
6 generally and specifically deny each and every allegation in the Complaint, and further deny that
7 Plaintiff or any class she purports to represent have been damaged in any sum or at all.

8 Defendants’ general denial is based on the factual contentions which include, but are not
9 limited to, the following: (1) Defendants properly and timely paid employees, including Plaintiff, for
10 all wages owed, including but not limited to overtime calculated at the proper regular rate of pay; (2)
11 Defendants provided employees, including Plaintiff, with legally-compliant meal and rest breaks; (3)
12 Defendants properly paid employees, including Plaintiff, meal and rest period premiums at the proper
13 rate; (4) Defendants provided employees, including Plaintiff, with complete and accurate wage
14 statements; (5) Defendants properly and timely paid employees, including Plaintiff, for all business
15 reimbursement expenditures; (6) Defendants paid all wages due upon termination of employment to
16 terminated employees; (7) Defendants did not engage in unlawful business acts or practices in
17 violation of California Business and Professions Code sections 17200 *et seq.*; (8) Defendants’ alleged
18 misconduct did not injure or otherwise damage employees, including Plaintiff; (9) Plaintiff’s definition
19 of the proposed class is unreasonably broad; and (10) Plaintiff will be unable to establish the
20 prerequisites for class certification, including, but not limited to: standing, numerosity, commonality
21 (questions of law or fact common to the class), typicality (Plaintiff’s claims are typical of the class),
22 superiority (of the class action mechanism), and class action manageability (of the trial plan).

23 Defendants reserve their due process right to receive a determination regarding class
24 certification, and contends that class certification is not appropriate in this instance.

25 Given the conclusory nature of the Complaint, Defendants hereby reserve their right to amend
26 or supplement their Answer upon further investigation and discovery of facts supporting its defenses.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATIVE DEFENSES

By way of separate, additional and/or distinct defenses to the Complaint and each cause of action therein, and without conceding that Defendants bear the burden of proof or the burden of persuasion as to any of these issues, Defendants assert the following defenses:

**FIRST AFFIRMATIVE DEFENSE
(FAILURE TO STATE A CLAIM)**

As a separate and distinct affirmative defense, Defendants assert that the Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(CLASS ACTION – CERTIFICATION PREREQUISITES)**

As a separate and distinct affirmative defense, Defendants assert that Plaintiff cannot maintain this action as a class action for multiple reasons including, but not limited to, a lack of numerosity; the fact that common issues of fact or law do not predominate, rather, to the contrary, individual issues predominate; Plaintiff’s claims are not representative or typical of the claims of the putative class members; Plaintiff cannot fairly and adequately represent the interests of the purported class; Plaintiff and alleged putative class counsel are not adequate representatives for the alleged putative class; and a well-defined community of interest in the questions of law and/or fact affecting Plaintiff does not exist.

**THIRD AFFIRMATIVE DEFENSE
(CLASS/REPRESENTATIVE ACTION – LACK OF MANAGEABILITY)**

As a separate and distinct affirmative defense, Defendants assert that the Complaint and each purported cause of action alleged therein, cannot proceed as a purported class or representative action because of difficulties likely to be encountered that render the action unmanageable.

**FOURTH AFFIRMATIVE DEFENSE
(CLASS ACTION – VIOLATION OF DUE PROCESS)**

As a separate and distinct affirmative defense, Defendants assert that certification of a class action, as applied to the facts and circumstances of this case, would constitute a denial of Defendants’

1 due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the
2 United States Constitution and the California Constitution.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(GOOD FAITH)**

5 As a separate and distinct affirmative defense, Defendants are informed and believe that further
6 investigation and discovery will reveal, and on that basis allege, that the Complaint and each cause of
7 action set forth therein cannot be maintained because, without admitting that any violation took place,
8 any violation of the Labor Code or Order of the Industrial Welfare Commission was not knowingly,
9 willfully or intentionally done and/or was an act or omission made in good faith, because there exists
10 a good faith dispute as to whether further compensation is due and/or Defendants had reasonable
11 grounds for believing that their wage payment practices complied with applicable laws and that any
12 act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare
13 Commission, such that Plaintiff and the putative class members are not entitled to any penalties or
14 damages in excess of any wages and are not entitled to any liquidated damages.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(PLAINTIFF'S BREACH OF DUTIES)**

17 As a separate and distinct affirmative defense, Defendants allege that the claims of Plaintiff
18 and/or some or all of the putative class Plaintiff seeks to represent are barred by their own breach of
19 the duties owed to Defendants pursuant to the California Labor Code, including but not limited to
20 California Labor Code §§ 2853, 2854, 2856, 2857 and/or 2859 and/or the refusal or failure by Plaintiff
21 and/or the putative class to meet Defendants' reasonable expectations and the job performance
22 requirements.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(STATUTE OF LIMITATIONS)**

25 As a separate and distinct affirmative defense, Defendants assert that each purported cause of
26 action set forth in the Complaint is barred in whole or in part by the applicable statute(s) of limitation,
27 including without limitation, California Code of Civil Procedure sections 337, 338 and/or 340;
28 Business and Professions Code section 17208; and California Labor Code sections 203(b), 226(a);

1 and/or any other applicable statutes of limitations.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 **(ESTOPPEL)**

4 As a separate and distinct affirmative defense, Defendants are informed and believe that a
5 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the
6 Complaint and each cause of action set forth therein is barred by the equitable doctrine of estoppel.

7 **NINTH AFFIRMATIVE DEFENSE**

8 **(LACHES)**

9 As a separate and distinct affirmative defense, Defendants are informed and believe that a
10 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the
11 Complaint and each cause of action set forth therein is barred by the equitable doctrine of laches.

12 **TENTH AFFIRMATIVE DEFENSE**

13 **(UNCLEAN HANDS)**

14 As a separate and distinct affirmative defense, Defendants are informed and believe that a
15 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the
16 Complaint and each cause of action set forth therein are barred by the equitable doctrine of unclean
17 hands.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(PRIOR OR PENDING LITIGATION)**

20 As a separate and distinct affirmative defense, Defendants allege that the Complaint and each
21 cause of action set forth therein is barred by the doctrines of collateral estoppel and/or res judicata to
22 the extent that Plaintiff and some or all putative class members Plaintiff seeks to represent have
23 litigated issues raised by the Complaint prior to adjudication of those issues in the instant action.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(BANKRUPTCY)**

26 To the extent Plaintiff and/or members of the putative class, or anyone else who joins this
27 lawsuit, petitioned for bankruptcy under either Chapter 7 or Chapter 13 of the United States bankruptcy
28 code, yet failed to list a wage claim against Defendants as a potential asset in their bankruptcy filings,

1 they are barred from pursuing their wage claims against Defendants.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 **(BREACH OF DUTY)**

4 As a separate and distinct affirmative defense, Defendants are informed and believe that a
5 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff's
6 claims are barred by her own breach of the duties owed to Defendants under California Labor Code
7 sections 2854, 2856, 2857, 2858 and/or 2859.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 **(DE MINIMIS)**

10 As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or the
11 putative class Plaintiff seeks to represent are barred from recovering under the Complaint under the
12 "*de minimis*" doctrine.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(NOT SUFFERED OR PERMITTED TO WORK)**

15 As a separate and affirmative defense, Defendants allege that the Complaint and each claim
16 set forth therein, is barred, in whole or in part, to the extent that Defendants did not permit Plaintiff
17 and/or the putative class members to work during the times for which they now claim unpaid wages.

18
19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(NOT SUBJECT TO THE CONTROL OF THE EMPLOYER)**

21 As a separate and affirmative defense, Defendants allege that the Complaint and each claim
22 set forth therein, is barred, in whole or in part, to the extent that Plaintiff and/or the putative class
23 members were not subject to the control of Defendants during the times for which they now claim
24 unpaid wages.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 **(UNJUST ENRICHMENT)**

27 As a separate and affirmative defense, Defendants allege that the Complaint and each cause of
28 action set forth therein, or some of them, are barred by the equitable doctrine of unjust enrichment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTEENTH AFFIRMATIVE DEFENSE
(OPPORTUNITY TO TAKE MEAL/REST BREAKS)

As a separate and distinct affirmative defense, Defendants asserts that, assuming *arguendo* that Plaintiff and/or the putative class she seeks to represent were entitled to meal and/or rest breaks, the Complaint is barred because they (1) failed to take meal and/or rest breaks that were provided to them in compliance with California law, (2) chose not to take the meal and/or rest breaks that were authorized and permitted, or (3) waived their right to meal and/or rest periods, including under California Labor Code Section 512(a).

NINETEENTH AFFIRMATIVE DEFENSE
(CONSENT – MEAL AND REST BREAKS)

As a separate and distinct affirmative defense, Defendants assert that the Complaint and each cause of action alleged therein are barred by the doctrine of consent.

TWENTIETH AFFIRMATIVE DEFENSE
(NO CLAIM FOR WAITING TIME PENALTIES)

As a separate and distinct affirmative defense, Defendants assert that Plaintiff has failed to state facts sufficient to constitute a claim for waiting time penalties under California Labor Code section 203 to the extent that any person claiming such penalties did not resign or were not discharged prior to the filing of this action, or were employed by Defendants at the time this action was filed.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(CLAIMS DISCHARGED)

As a separate and distinct affirmative defense, Defendants allege that the Complaint, and each cause of action set forth therein, or some of them, are barred because all or a portion of the wages, premium pay, interest, attorneys’ fees, penalties and/or other relief sought by Plaintiff on her own behalf and/or on behalf of the putative class members were, or will be before the conclusion of this action, paid or collected, and therefore, Plaintiff’s claims and/or the claims of the putative class members have been partially or completely discharged.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(SUBSTANTIAL COMPLIANCE)

1 As a separate and distinct affirmative defense, Defendants allege that even assuming,
2 *arguendo*, that Defendants failed to comply with any provision of the Labor Code, including Labor
3 Code sections 510, 1194, 226, 226.7, 512, 203, and 2802, Defendants substantially complied with the
4 Labor Code and or any applicable Wage Orders and Regulations, thus rendering an award of civil
5 penalties inappropriate under the circumstances.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
7 **(LABOR CODE § 226 – NO INJURY AND NO KNOWING AND INTENTIONAL**
8 **FAILURE)**

9 As a separate and distinct affirmative defense, Defendants allege that, assuming *arguendo*
10 Plaintiff and/or the putative class were not provided with a compliant statement of wages, Plaintiff
11 and/or the putative class are not entitled to recover damages because Plaintiff and/or the putative
12 class were not “injured” thereby and because Defendants’ alleged failure to comply with California
13 Labor Code § 226(a) was not a “knowing and intentional failure” under California Labor Code §
14 226(e).

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**
16 **(NO KNOWLEDGE OF WORK)**

17 As a separate and distinct affirmative defense, Defendants allege that if either Plaintiff or any
18 putative class member “worked” hours for which compensation was not paid, Defendants had no
19 knowledge, or reason to know, of such “work” and such overtime “work” was undertaken without the
20 consent or permission of Defendants.

21 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**
22 **(BONA FIDE DISPUTE)**

23 As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s claims for
24 penalties are barred in whole or in part, because a good faith, *bona fide* dispute exists over whether
25 wages are owed.

26 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**
27 **(PRELIMINARY OR POSTLIMINARY ACTIVITIES)**

28 The Complaint, and each purported cause of action alleged therein, are barred in whole or in

1 part as to all hours during which Plaintiff and the putative class members were engaged in activities
2 which were preliminary or postliminary to her/their principal activities.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 **(ACTIONS BY AGENTS OUTSIDE THE SCOPE OF AUTHORITY)**

5 As a separate and distinct affirmative defense, Defendants allege that claims in the Complaint
6 cannot be maintained against Defendants because if Plaintiff and/or members of the putative class
7 Plaintiff purports to represent took the actions alleged, such actions were committed outside the course
8 and scope of employment, were not authorized, adopted or ratified by Defendants and Defendants did
9 not know of nor should they have known of such conduct.

10 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

11 **(NO WILLFUL OR INTENTIONAL VIOLATION)**

12 As a separate and distinct affirmative defense, Defendants assert that the Complaint fails to
13 state a claim for penalties because Defendants did not willfully or intentionally violate the Labor Code.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 **(ADEQUATE REMEDY AT LAW)**

16 As a separate and distinct affirmative defense, Defendants assert that Plaintiff and the putative
17 class members are not entitled to equitable relief insofar as they have an adequate remedy at law.

18 **THIRTIETH AFFIRMATIVE DEFENSE**

19 **(NO PROPER REPRESENTATIVE CLAIMS)**

20 As a separate and distinct affirmative defense, Defendants assert that the claim based on
21 Business and Professions Code section 17200 *et seq.* is not appropriate for resolution on a
22 representative basis.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 **(NO STANDING)**

25 As a separate and distinct affirmative defense, Defendants assert that Plaintiff and those she
26 seeks to represent lack standing to sue pursuant to California Business & Professions Code sections
27 17200 and 17204 as she has not suffered any injury in fact or lost money or property as a result of any
28 allegedly unlawful business practice of Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-SECOND AFFIRMATIVE DEFENSE
(LACK OF STANDING TO RECOVER PENALTIES)

As a separate and distinct affirmative defense, Defendants assert that Plaintiff lacks standing to bring this action for, and the court lacks jurisdiction to award, certain of the penalties sought in the Complaint, as such penalties may only be imposed in a proceeding brought by the California Labor Commissioner.

THIRTY-THIRD AFFIRMATIVE DEFENSE
(CLASS ACTION – ADEQUACY AND STANDING)

As a separate and distinct affirmative defense, Defendants allege that the Complaint and each cause of action set forth therein, or some of them, are barred because Plaintiff is not an adequate and proper representative of the putative class she purports to represent, and she lacks standing to pursue claims against Defendants.

THIRTY-FOURTH AFFIRMATIVE DEFENSE
(INJURY RESULTED FROM ACT OR OMISSION OF PLAINTIFF AND/OR THE PUTATIVE CLASS)

As a separate and distinct affirmative defense, Defendants allege that each purported cause of action contained in the Complaint, or some of the causes of action, are barred because the alleged losses or harms sustained by Plaintiff and/or the putative class, if any, resulted from the acts or omissions of Plaintiff and/or the putative class, and/or was proximately caused by the actions or inactions of Plaintiff and/or the putative class.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(CLAIMS BARRED WHERE VIOLATIONS HAVE DISCONTINUED)

As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s claims for recovery in the form of restitution, disgorgement, or injunctive relief under California Business and Professions Code section 17200, *et seq.*, are barred with respect to any alleged violations that have been discontinued, ceased, or are not likely to recur.

THIRTY-SIXTH AFFIRMATIVE DEFENSE
(MULTIPLE PENALTIES UNCONSTITUTIONAL)

1 As a separate and distinct affirmative defense, Defendants allege that the Complaint, and each
2 cause of action set forth therein, or some of them, are barred because, as applied in this putative class
3 action, an award of civil penalties would result in the imposition of excessive, replicating fines or
4 penalties in violation of the Eighth Amendment to the United States Constitution and Article I, Section
5 7 of the California Constitution and Defendants' fundamental constitutional rights to due process
6 under the Fourteenth Amendment of the United States Constitution and the Constitution and laws of
7 the State of California. See, e.g., *State Farm Mutual Automobile Insurance Company v. Campbell*,
8 538 U.S. 408 (2003); *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

9 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

10 **(BUSINESS AND PROFESSIONS CODE §17200 UNCONSTITUTIONAL AS APPLIED)**

11 As a separate and distinct affirmative defense, Defendants allege that the prosecution of a
12 representative action on behalf of the general public under California Business and Professions Code
13 section 17200, *et seq.*, as applied to the facts and circumstances of this case, would constitute a denial
14 of Defendants' due process rights, both substantive and procedural, in violation of the California
15 Constitution and the Fourteenth Amendment to the United States Constitution.

16 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

17 **(LIQUIDATED DAMAGES BARRED)**

18 As a separate and distinct affirmative defense, Plaintiff's claims and the claims of the putative
19 class for liquidated damages are barred in whole or in part under California law because any acts or
20 omissions giving rise to this action were done in good faith and with reasonable grounds for believing
21 that the actions or omissions did not violate the law.

22 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

23 **(FAILURE TO STATE A CLAIM FOR ATTORNEYS' FEES AND COSTS)**

24 As a separate and distinct affirmative defense, Defendants assert that Plaintiff failed to state
25 facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

26 **FORTIETH AFFIRMATIVE DEFENSE**

27 **(PREJUDGMENT INTEREST)**

28 As a separate and distinct affirmative defense, Defendants assert that the Complaint fails to

1 properly state a claim upon which prejudgment interest may be awarded, as the damages claimed are
2 not sufficiently certain to allow an award of prejudgment interest.

3 **FORTY-FIRST AFFIRMATIVE DEFENSE**
4 **(MITIGATION OF DAMAGES)**

5 As a separate and distinct affirmative defense, Defendants are informed and believe that a
6 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff
7 and/or the putative class members failed to exercise reasonable care to mitigate their damages, if any
8 were suffered, and that their right to recover against Defendants should be reduced and/or eliminated
9 by such a failure.

10 **FORTY-SECOND AFFIRMATIVE DEFENSE**
11 **(WAIVER)**

12 As a separate and distinct affirmative defense, Defendants are informed and believe that a
13 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the
14 Complaint and each cause of action set forth therein is barred by the equitable doctrine of waiver.

15 **FORTY-THIRD AFFIRMATIVE DEFENSE**
16 **(ACCORD AND SATISFACTION)**

17 As a separate and distinct affirmative defense, Defendants assert that Plaintiff's claims fail
18 because Plaintiff and all members of the putative class have been fully paid all amounts legally owed
19 by Defendants and are barred by the doctrine of accord and satisfaction.

20 **FORTY-FOURTH AFFIRMATIVE DEFENSE**
21 **(SETTLEMENT AND RELEASE)**

22 As a separate and distinct defense, Defendants assert that Plaintiff or putative class members
23 cannot maintain their claims against Defendants to the extent that Plaintiff and/or some or all putative
24 class members Plaintiff seeks to represent have released Defendants from liability as alleged in the
25 Complaint prior to the adjudication of those claims in the instant action.

26 **FORTY-FIFTH AFFIRMATIVE DEFENSE**
27 **(EXCESSIVE FINES AND PUNISHMENT)**

28 As a separate and distinct affirmative defense, Defendants assert that Plaintiff's Complaint and

1 every cause of action therein is barred based on the United States Constitution's prohibition against
2 excessive fines and punishment.

3 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(AVOIDABLE CONSEQUENCES)**

5 As a separate and distinct affirmative defense, Defendants assert that the Complaint and each
6 purported claim for relief set forth therein and any recovery to which Plaintiff and putative class
7 members might be entitled (and Defendants does not admit that Plaintiff and putative class members
8 are entitled to any recovery) must be reduced pursuant to the doctrine of avoidable consequences
9 because Defendants took reasonable steps to prevent and correct any of the harm/violations alleged.
10 Plaintiff and/or the putative class unreasonably failed to use the preventative and corrective
11 opportunities provided to them by Defendants, and reasonable use of Defendants' procedures would
12 have prevented at least some, if not all, of the harm that Plaintiff and/or the putative class allegedly
13 suffered.

14 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

15 **(SECRETED OR ABSENTED)**

16 As a separate and distinct affirmative defense, Defendants allege that the Complaint cannot be
17 maintained against Defendants to the extent Plaintiff and/or any of the other putative class secreted or
18 absented themselves to avoid payment of wages, thereby relieving Defendants of liability for penalties
19 under Labor Code sections 201, 202, and/or 203.

20 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

21 **(CREDIT AND OFFSET)**

22 As a separate and distinct affirmative defense, Defendants allege that it is entitled to an offset
23 against any relief due Plaintiff and/or members of the putative class that Plaintiff seeks to represent,
24 based upon their respective wrongful conduct and/or monies owed to Defendants, including, but not
25 limited to, any overpayments for hours worked.

26 **ADDITIONAL AFFIRMATIVE DEFENSES**

27 Defendants presently have insufficient knowledge or information upon which to form a belief
28 as to whether additional, as yet unstated, defenses may be warranted and reserves the right to assert

1 additional defenses or affirmative defenses in the event discovery indicates such defenses are
2 appropriate.

3 **PRAYER**

4 WHEREFORE, Defendants pray that:

- 5 1. No class be certified and that Plaintiff's Complaint be dismissed in its entirety with
- 6 prejudice;
- 7 2. Plaintiff and any putative class members take nothing by the Complaint;
- 8 3. Judgment be entered against Plaintiff and in favor of Defendants;
- 9 3. Defendants be awarded its costs of suit and attorneys' fees; and
- 10 4. The Court award Defendants such other relief as it deems appropriate.

11
12 Dated: July 30, 2019

13 

14
15 EMILY T. PATAJO
16 RACHAEL LAVI
17 CASSIDY C. VEAL
18 LITTLER MENDELSON, P.C.
19 Attorneys for Defendants
20 ABERCROMBIE & FITCH CO.,
21 ABERCROMBIE & FITCH STORES, INC.
22 AND HOLLISTER, CO.
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2049 Century Park East, 5th Floor, Los Angeles, California 90067.3107. On July 30, 2019, I served the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT

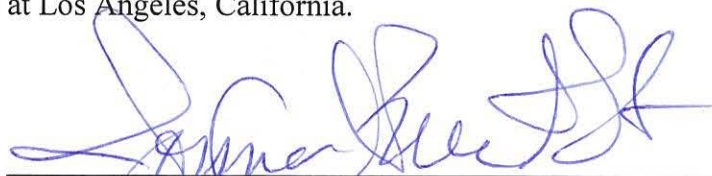
by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Los Angeles, California addressed as set forth below.

James R. Hawkins
Gregory Mauro
Michael Calvo
9880 Research Drive, Ste. 800
Irvine, CA 92618
Telephone: 949-387-7200
Fax: 949-387-6676
James@jamesshawkinsapl.com
Greg@jameshawkinsapl.com
Michael@jamesshawkinsapl.com

Attorney for Plaintiff

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 30, 2019 at Los Angeles, California.



Jonna Newcomb-Carter

FIRMWIDE:165473752.1 103662.1001



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

PAYMENT RECEIPT

E-Filing Transaction #: 2821356

Receipt #: 12419208

Clerk ID: olopez

Transaction No: 12595149

Transaction Date: 07/30/2019

Transaction Time: 04:01:23 PM

Case Number	Fee Type	Qty	Fee Amount\$	Balance Due	Amount Paid	Remaining Balance		
30-2019-01068593-CU-OE-CXC	195 - Answer or other 1st paper	1	\$435.00	\$435.00	\$435.00	\$0.00		
30-2019-01068593-CU-OE-CXC	195 - Answer or other 1st paper	1	\$435.00	\$435.00	\$435.00	\$0.00		
30-2019-01068593-CU-OE-CXC	195 - Answer or other 1st paper	1	\$435.00	\$435.00	\$435.00	\$0.00		
30-2019-01068593-CU-OE-CXC	35 - Complex Case Fee - Response	1	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00		
30-2019-01068593-CU-OE-CXC	35 - Complex Case Fee - Response	1	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00		
30-2019-01068593-CU-OE-CXC	35 - Complex Case Fee - Response	1	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00		
					Sales Tax:	\$0.00		
					Total:	\$4,305.00	Total Rem. Bal:	\$0.00

E-Filing : - OneLegal

E-Filing: \$4,305.00

Total Amount Tendered: \$4,305.00

Change Due: \$0.00

Balance: **\$0.00**

A \$45 fee may be charged for each returned check, electronic funds transfer or credit card payment.

ORIGINAL

1 EMILY T. PATAJO, Bar No. 250212
epatajo@littler.com
2 RACHAEL LAVI, Bar No. 294443
rlavi@littler.com
3 CASSIDY C. VEAL, Bar No. 323899
cveal@littler.com
4 LITTLER MENDELSON, P.C.
2049 Century Park East
5 5th Floor
Los Angeles, CA 90067.3107
6 Telephone: 310.553.0308
Facsimile: 310.553.5583

7 Attorneys for Defendants
8 ABERCROMBIE & FITCH CO.,
ABERCROMBIE & FITCH STORES, INC.
9 AND HOLLISTER CO.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 JASMAINE SHAW,

13 Plaintiff,

14 v.

15 ABERCROMBIE & FITCH CO., an
16 Ohio Corporation, ABERCROMBIE &
17 FITCH STORES, INC., an Ohio
18 Corporation AND HOLLISTER CO.,
an Ohio Corporation,

19 Defendants.

Case No.

**DECLARATION OF STACIA
JONES IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT PURSUANT TO
28 U.S.C. §§ 1332, 1441 AND 1446**

Complaint filed: May 8, 2019
(Orange County Superior Court, Case
No. 30-2019-01068593-CU-OE-CXC)

Trial Date: None Set

20
21
22
23
24
25
26
27
28

DECLARATION OF STACIA JONES

I, Stacia Jones, declare as follows:

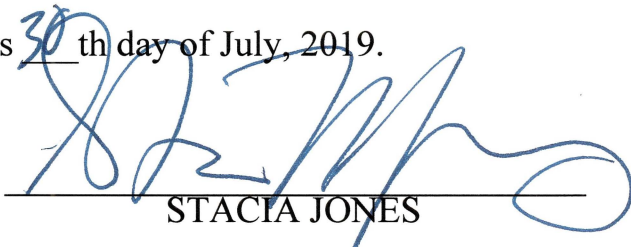
1. I am employed by Abercrombie & Fitch Co., in New Albany, Ohio as a Vice President, Associate General Counsel. In my capacity as a Vice President, Associate General Counsel, I am familiar with Abercrombie & Fitch Co.'s corporate structure, and also the corporate structure of Abercrombie & Fitch Stores, Inc. and Hollister Co., subsidiaries of Abercrombie & Fitch Co. This includes, but is not limited to, where each of these entities is incorporated and information regarding their headquarters and principal place of business. If called and sworn as a witness, I could and would competently testify thereto.

2. Abercrombie & Fitch Co., Abercrombie & Fitch Stores, Inc. and Hollister Co., are all corporations, not states, state officials, or other governmental entities.

3. Abercrombie & Fitch Co. was, at the time this action was filed and at the time of this declaration, a corporation organized under the laws of the State of Delaware. Abercrombie & Fitch Stores, Inc. was, at the time this action was filed and at the time of this declaration, a corporation organized under the laws of the State of Ohio. Hollister Co. is a fictitious business name registered by J.M. Hollister, LLC, an Ohio Limited Liability Company. Each of these entities maintain their principal place of business at 6301 Fitch Path, New Albany, Ohio, which is where the corporate headquarters are located.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in New Albany, Ohio on this 30th day of July, 2019.


STACIA JONES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EMILY T. PATAJO, Bar No. 250212
 epatajo@littler.com
 2 RACHAEL LAVI, Bar No. 294443
 rlavi@littler.com
 3 CASSIDY C. VEAL, Bar No. 323899
 cveal@littler.com
 4 LITTLER MENDELSON, P.C.
 2049 Century Park East
 5 5th Floor
 Los Angeles, CA 90067.3107
 6 Telephone: 310.553.0308
 Facsimile: 310.553.5583

7 Attorneys for Defendants
 8 ABERCROMBIE & FITCH CO.,
 ABERCROMBIE & FITCH STORES, INC.
 9 AND HOLLISTER CO.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 JASMAINE SHAW,

13 Plaintiff,

14 v.

15 ABERCROMBIE & FITCH CO., an
 16 Ohio Corporation, ABERCROMBIE &
 17 FITCH STORES, INC., an Ohio
 Corporation AND HOLLISTER CO.,
 18 an Ohio Corporation,

19 Defendants.

Case No.

**DECLARATION OF ADAM
 CHMIELWESKI IN SUPPORT OF
 DEFENDANTS' NOTICE OF
 REMOVAL OF CIVIL ACTION TO
 FEDERAL COURT PURSUANT TO
 28 U.S.C. §§ 1332, 1441 AND 1446**

Complaint filed: May 8, 2019
 (Orange County Superior Court, Case
 No. 30-2019-01068593-CU-OE-CXC)

Trial Date: None Set

DECLARATION OF ADAM CHMIELWESKI

I, Adam Chmielweski, declare as follows:

1. I am employed by Abercrombie & Fitch Co. (“Abercrombie”), in New Albany, Ohio as a Sr. Manager, HRIS. I am an authorized custodian of Abercrombie’s records pertaining to human resource data for employees who work or worked in Abercrombie’s various retail stores, which includes Abercrombie & Fitch, abercrombie, and Hollister Co. This specifically includes data related to the dates individuals worked for Abercrombie, the number of individuals formerly and presently employed by Abercrombie, their base pay rates and hours worked as recorded by Abercrombie’s electronic timekeeping system, and any other compensation they received. All of the information set forth in this declaration is based on my personal and first-hand knowledge or based on documents created and kept and practices conducted in the regular course of Abercrombie’s business. If called and sworn as a witness, I could and would competently testify thereto.

2. Abercrombie maintains business records that list every employee’s start date in a particular position, termination date (if applicable), work location, rate of pay, and exempt or non-exempt classification. Based on a review of these records:

- a. Abercrombie employed a total of approximately 28,203 hourly, non-exempt California employees from May 8, 2015 to the present, who worked 693,940 workweeks during that time frame. The weighted average hourly pay rate of those 28,303 employees was \$11.66.
- b. Abercrombie employed approximately 10,372 hourly, non-exempt employees from May 8, 2018 to May 8, 2019, with 105,305 total pay periods.

3. Abercrombie issues wage statements to its hourly, non-exempt California employees on a bi-weekly basis.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in New Albany, Ohio on this 31st day of July, 2019.



ADAM CHMIELWESKI