

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.09-cv-02757-WYD-KMT

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,  
ANITA HANSEN,  
ROBERT SIROWITZ,  
JOSHUA STAPEN,  
ROBIN STEPHENS, and  
BENJAMIN HERNANDEZ,

Plaintiffs, on behalf of themselves and all others similarly situated,

v.

ABERCROMBIE & FITCH CO.,  
ABERCROMBIE & FITCH STORES, INC, and  
J.M. HOLLISTER LLC, d/b/a HOLLISTER CO.

Defendants.

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**THIRD AMENDED AND CLASS ACTION COMPLAINT**

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Plaintiffs, Colorado Cross-Disability Coalition, Anita Hansen, Robert Sirowitz, Joshua Stapen, Robin Stephens, and Benjamin Hernandez, by and through undersigned counsel, hereby submit this Third Amended Class Action Complaint, for violations of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, and the Colorado Civil Rights Act (“CCRA”), Colo. Rev. Stat. § 24-34-601 *et seq.*

**INTRODUCTION**

1. Almost twenty years after the passage of the ADA, Abercrombie & Fitch Co., Abercrombie & Fitch Stores, Inc, J.M. Hollister LLC, d/b/a Hollister Co. (“Defendants”), all

related companies and expanding clothing retailers with stores throughout the United States and beyond, discriminate against individuals who use wheelchairs for mobility. Defendants design, construct and operate stores that provide separate, segregated and unequal access and services to customers who use wheelchairs.

2. The federal ADA was enacted in 1990, “[t]o establish a clear and comprehensive prohibition of discrimination on the basis of disability.” The ADA prohibits public accommodations, like the stores Defendants own and operate, from providing individuals who use wheelchairs with separate or unequal benefits and services.

3. Colorado’s state law equivalent, the CCRA, has prohibited discrimination on the basis of disability since before the enactment of the ADA and also requires that individuals who use wheelchairs for mobility be provided with the “full and equal enjoyment” of Defendants’ goods, services, facilities, privileges and accommodations.

4. According to Abercrombie & Fitch Co.’s March 2009 form 10-K submitted to the federal Securities and Exchange Commission and available on its website:

The Company’s in-store marketing is designed to convey the principal elements and personality of each brand. The store design, furniture, fixtures and music are carefully planned and coordinated to create a shopping experience that reflects the Abercrombie & Fitch, abercrombie . . . [or] Hollister . . . lifestyle.

...

Every brand displays merchandise uniformly to ensure a consistent store experience, regardless of location. Store managers receive detailed plans designating fixture and merchandise placement to ensure coordinated execution of the Company-wide merchandising strategy.

5. That “store experience” and “lifestyle” exclude people who use wheelchairs. Defendants’ “coordinated” store layouts are not accessible to individuals who use wheelchairs.

6. Defendants created and designed all Hollister Co. stores, one of Defendants' store brands, after the passage of and the effective date of the ADA. In newly designed and constructed stores or those that have been altered after the passage of the ADA, such stores must be "readily accessible to and usable by" individuals who use wheelchairs. Hollister Co. stores throughout the United States are not accessible to individuals who use wheelchairs.

7. Despite the ADA's and the CCRA's long existence, Defendants have designed, constructed and maintain Hollister Co. stores throughout the United States that deny individuals who use wheelchairs full and equal access to their stores.

8. Defendants discriminate against customers who use wheelchairs in ways that include, without limitation, the following:

- a. Designing and constructing stairs at Hollister Co. stores' main entrances throughout the United States and forcing individuals who use wheelchairs to enter at a different, separate and segregated location;
- b. locking doors at Hollister Co. stores that are supposed to be accessible to individuals who use wheelchairs;
- c. designing and constructing service counters in Hollister Co. stores throughout the United States that are too high for individuals in wheelchairs to use; and
- d. arranging merchandise displays, furniture, plants, etc. in their stores that in Hollister Co. stores throughout the United States that block access to customers who use wheelchairs throughout the store.

9. Robert Sirowitz, Anita Hansen, Robin Stephens, Joshua Stapen and Benjamin

Hernandez (“Individual Plaintiffs”), all use wheelchairs, and Colorado Cross-Disability Coalition (“CCDC”) is a disability rights advocacy organization that advocates for individuals who use wheelchairs. Each Individual Plaintiff is a member of CCDC. CCDC and the Individual Plaintiffs have been damaged by Defendants’ discrimination and seek a court order directing Defendants to comply with the ADA, monetary damages under the CCRA and recovery of their reasonable attorneys’ fees and costs.

10. Plaintiffs seek to send a clear message that segregated services and inaccessible public accommodations are no longer permitted under the law and can no longer be tolerated.

11. Because Defendants’ Hollister Co. stores are designed and constructed uniformly with respect to service counter and elevated entrance designs in ways that violate the ADA and CCRA, Plaintiffs seek to certify a class action pursuant to Fed. R. Civ. P. 23.

#### **JURISDICTION**

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and pursuant to its pendent jurisdiction over claims brought under the laws of the State of Colorado.

13. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

#### **PARTIES**

14. Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

15. Anita Hansen is substantially limited in the major life activity of walking and uses a motorized wheelchair for mobility. Anita Hansen is a CCDC member.

16. Robert Sirowitz is substantially limited in the major life activity of walking and uses a motorized wheelchair for mobility. Robert Sirowitz is a CCDC member.

17. Joshua Stapen is substantially limited in the major life activity of walking and uses a manual wheelchair for mobility. Joshua Stapen is a CCDC member.

18. Robin Stephens is substantially limited in the major life activity of walking and uses a motorized wheelchair for mobility. Robin Stephens is a CCDC member.

19. Benjamin Hernandez is substantially limited in the major life activity of walking and uses a motorized wheelchair for mobility. Benjamin Hernandez is a CCDC member.

20. Defendant Abercrombie & Fitch Co. (“A&F Co.”) is a corporation, incorporated in Delaware in 1996. A&F Co. is a retailer that operates stores throughout the United States and websites selling casual sportswear apparel under Abercrombie & Fitch, abercrombie, Hollister and other brands. A&F Co.’s principal place of business located at 6301 Fitch Path, New Albany, OH 43054. On information and belief, A&F Co. is the parent company for the other defendants in this case, and each of these defendants operates stores throughout the United States.

21. Defendant Abercrombie & Fitch Stores, Inc. (“A&F Stores”) is a subsidiary of A&F Co. A&F Stores operates clothing stores throughout the United States. A&F Stores operates stores under the names “Abercrombie & Fitch” and “abercrombie.” A&F Stores is a corporation, with its principal place of business located at 6301 Fitch Path, New Albany, OH 43054. A&F Stores is the parent company for J.M. Hollister LLC, d/b/a Hollister Co. (“Hollister”).

22. J.M. Hollister LLC, d/b/a Hollister Co. (“Hollister”) is a subsidiary of A&F Stores. Hollister operates clothing stores throughout the United States, including in Colorado. The stores in Colorado operate under the name “Hollister Co.” Hollister is a limited liability company, with its principal place of business located at 6301 Fitch Path, New Albany, OH 43054. Hollister operates stores throughout the United States.

**CLASS ACTION ALLEGATIONS**

23. Defendants have discriminated against and continue to discriminate against customers who use wheelchairs as more fully set forth in this Complaint.

24. Defendants own and operate Hollister Co. stores throughout the United States that discriminate against individuals who use wheelchairs in violation of the ADA and in Colorado that violate the CCRA.

25. Defendants have designed, constructed and/or maintained service counters in Hollister Co. stores that are too high for customers in wheelchairs to reach.

26. Defendants have a uniform service counter design in all of their Hollister Co. stores throughout the United States.

27. Defendants’ uniform service counters are not readily accessible to and usable by individuals who use wheelchairs.

28. Defendants’ uniform service counter design does not afford individuals who use wheelchairs the full and equal opportunity to enjoy the goods, services, facilities, privileges and accommodations offered at Hollister Co. stores.

29. Defendants arrange and maintain merchandise displays and other store displays in

its Hollister Co. stores throughout the United States that block access for individuals who use wheelchairs throughout the store to merchandise displayed on fixed shelving.

30. Defendants' design and layout of its Hollister Co. stores in the United States that block access for individuals who use wheelchairs throughout the store to merchandise displayed on fixed shelving do not afford individuals who use wheelchairs the full and equal opportunity to enjoy the goods, services, facilities, privileges and accommodations provided at those stores,

31. Defendants have designed and constructed elevated entrances at their Hollister Co. stores throughout the United States that have steps. These entrances are not accessible to individuals who use wheelchairs.

32. The elevated entrances with steps in Hollister Co. stores throughout the United States that have elevated entrances with stairs are designed to be the main public entrance to those stores.

33. In Hollister Co. stores throughout the United States that have elevated entrances with stairs, Defendants have designed and constructed a separate segregated entrance for individuals who use wheelchairs.

34. The separate segregated entrances at Hollister Co. stores throughout the United States are not readily accessible to and usable by individuals who use wheelchairs.

35. The separate segregated entrances at Hollister Co. stores throughout the United States do not provide individuals who use wheelchairs with the full and equal enjoyment of Hollister Co. stores' goods, services, facilities, accommodations and privileges.

36. All of Hollister's stores were designed and constructed after January 26, 1993.

37. Hollister Co. stores throughout the United States that have elevated entrances with stairs do not provide signage at the entrance directing individuals who use wheelchairs to the separate segregated entrances.

38. In Hollister's stores with steps, customers who use wheelchairs who have found the door opening device and who have entered the store have experienced the following types of access barriers:

- a. They press the button, wait for the door to open slowly and then enter either the "Dude's" side or "Betty's" side.
- b. The only way to access the other side of the store (from "Dude's" to "Betty's," or vice versa) for a customer using a wheelchair is to go through the store to the service counter, mid-way back in the store, and then the individual can access the other side.
- c. Often, there is no accessible route between the Dude's and Betty's sides of the stores because merchandise displays, furniture, plants and other items block accessible routes.

39. The interior of Hollister's stores generally are arranged with merchandise, furniture, plants and other items which impede access through the store for customers who use wheelchairs.

40. On information and belief, Defendants intend to continue designing and constructing stores with steps at the entrance used by the general public.

41. Within two years prior to the filing of the original Complaint, each of the



Individual Plaintiffs has experienced some or all of the accessibility barriers described in this Third Amended and Complaint at Defendants' Hollister Co. stores.

42. On information and belief, class members have experienced the same barriers to full accessibility that the Individual Plaintiffs and CCDC members who use wheelchairs have experienced exist in Defendants' stores throughout the United States.

43. Defendants have been involved in lawsuits before the instant case regarding claims of ADA violations and a lack of accessibility for individuals who use wheelchairs.

44. Defendants maintain and/or engage in policies, practices and procedures that violate the ADA.

45. Class members have been damaged by Defendants' failure to comply with the ADA.

46. The Individual Plaintiffs and Colorado Cross-Disability Coalition ("Proposed Class Representatives") seek to maintain this action as a class pursuant to Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure and under Rule 23(c)(4) with respect to the following issues ("Class Issues"):

- a. Whether Defendants' elevated entrances with stairs at Hollister Co. stores throughout the United States are readily accessible to and usable by individuals who use wheelchairs.
- b. Whether Defendants' elevated entrances with stairs at Hollister Co. stores throughout the United States deny individuals who use wheelchairs the full and equal enjoyment of the goods, services, privileges and facilities at Hollister

stores.

- c. Whether Defendants' separate segregated entrances for individuals who use wheelchairs at Hollister Co. stores throughout the United States are readily accessible to and usable by individuals who use wheelchairs.
- d. Whether Defendants' separate segregated entrances for individuals who use wheelchairs at Hollister Co. stores throughout the United States deny individuals who use wheelchairs the full and equal enjoyment of the goods, services, privileges and facilities at Hollister stores.
- e. Whether Defendants' services counters at Hollister Co. stores throughout the United States are readily accessible to and usable by individuals who use wheelchairs.
- f. Whether Defendants' service counters at Hollister Co. stores throughout the United States deny individuals who use wheelchairs and scooters the full and equal enjoyment of the goods, services, privileges and facilities at Hollister stores.
- g. Whether Defendants' uniform policies and practices of blocking access to fixed shelving merchandise displays for individuals who use wheelchairs at Hollister Co. stores throughout the United States deny such individuals full and equal access to the stores' goods, services, privileges and accommodations.

47. The class consists of all people with disabilities who use wheelchairs for mobility who, during the two years prior to the filing of the Complaint (doc. 1, filed November 24, 2009)

in this case, were denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any Hollister Co. store in the United States on the basis of disability.

48. The class identified is believed to consist of hundreds of members, and joinder of all such class members in this lawsuit is impracticable.

49. All questions of law or fact as set forth in above relating to the specific Class Issues are common to the class.

50. The claims of the Proposed Class Representatives are typical of the claims of the class. The Individual Plaintiffs -- like all other members of the class -- each use a wheelchair for mobility and claim that Defendants have violated the ADA by constructing stores with stairs at their entrances and high service counters after the effective date of the ADA.

51. The Proposed Class Representatives will fairly and adequately protect the interests of the class because they have retained counsel with extensive experience in litigation, including class action litigation.

52. The Proposed Class Representatives have no interests that conflict in any way with those of the class.

53. This action may be maintained pursuant to Rule 23(b)(1)(B), because the adjudication of the individual Proposed Class Representatives' claims regarding the Class Issues would, as a practical matter, be dispositive of the interests of all other class members.

54. This action may be maintained pursuant to Rule 23(b)(2), because Defendants' actions that form the basis of the Class Issues are actions that apply generally to the class.

Injunctive or declaratory relief, therefore, is appropriate respecting the class as a whole.

55. This action may be maintained pursuant to Rule 23(b)(3), because, with respect to the Class Issues, there are common questions of fact and law and all questions relating to the particular Class Issues predominate over any questions affecting only individual class members.

56. This action may be certified as a class pursuant to Rule 23(c)(4) because the Class Issues apply to all class members and to all Hollister Co. stores nationwide.

57. A class action with respect to the Class Issues is superior to other available methods for fairly and efficiently adjudicating the controversies presented by the class because the damages suffered by individual class members are small and because the burden upon such individual litigants may make it difficult and impractical for them to individually pursue their claims against Defendants.

58. Judicial economy will be served by maintenance of this lawsuit as a class action with respect to the Class Issues as it is likely to avoid the burden that would otherwise be placed upon the judicial system by the filing of numerous, similar suits by disabled individuals throughout the United States. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court.

#### **INDIVIDUAL ALLEGATIONS**

59. Plaintiffs reallege and reincorporate by reference all other allegations in this Complaint herein.

60. Plaintiff Anita Hansen has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. As set forth below, Plaintiff Hansen will go to

Defendants' stores if Defendants remedy the ADA violations identified in this complaint.

61. Plaintiff Hansen visits malls and other retail shopping complexes, including malls and shopping complexes in which Defendants maintain Hollister Co. stores approximately six to eight times per year in order to shop for merchandise for herself, her friends and relatives.

62. Plaintiff Hansen visited Defendants' Hollister store, located in the Orchard Towne Center at 14697 Delaware Street, Westminster, Colorado, on July 30, 2010, and experienced the accessibility barriers identified in this Third Amended and Class Action Complaint.

63. When Plaintiff Hansen arrived at the Orchard Town Center Hollister store, she did not see a way to access the store right away because there are steps at the front entrance. The steps led to a platform with chairs and items displayed on it and appeared to be the only entrance to the store.

64. Because Plaintiff Hansen uses a wheelchair, the steps prohibited Plaintiff Hansen from accessing the store.

65. There was no sign at the entrance where the steps are that directed Plaintiff Hansen to an accessible entrance.

66. Eventually, Plaintiff Hansen did find what looked like shutters with a small button next to them. This button was located to the left of the main entrance approximately ten feet and was difficult to see.

67. When Plaintiff Hansen approached the button and pressed it, a door (which looks like shutters) was locked.

68. Someone outside the store who did not appear to be an employee asked Plaintiff Hansen if she needed to get in the store. Plaintiff Hansen told him, "Yes."

69. The entrance to the store was very narrow, but Plaintiff Hansen was able to enter.

70. Plaintiff Hansen entered on the young women's side of the store.

71. Looking at the entrance from inside the store, Plaintiff Hansen observed steps coming down from the entrance platform into the young women's section.

72. Plaintiff Hansen went about twenty-five feet into the store and was blocked by barriers -- merchandise tables, furniture and plants -- that were arranged in such a way that Plaintiff Hansen could not go further into the store in her wheelchair.

73. Plaintiff Hansen had to request employees move tables and furniture about five to six times to be able to get through the store.

74. Plaintiff Hansen wanted to access the fragrances section of the store but was unable to do so, as her access to that part of the store was blocked by furniture and merchandise.

75. The only way to get to the young men's side of the store was to ask employees to move tables, chairs, and other heavy objects so Plaintiff Hansen could have a clear path for her wheelchair.

76. Plaintiff Hansen finally found shirts Plaintiff Hansen wanted to purchase, but was unable to access most of the merchandise in the store.

77. Plaintiff Hansen looked for the service counter to make a purchase and discovered that it was located approximately halfway back in the middle of the store. When Plaintiff Hansen approached the service counter, Plaintiff Hansen discovered it was about as high as her forehead,

and there was no lower portion so she could reach the counter. The service counter is one of the highest Plaintiff Hansen has observed in a clothing store.

78. The employee behind the counter waited for Plaintiff Hansen to hand Plaintiff Hansen the shirts Plaintiff Hansen was buying, but Plaintiff Hansen was unable to hand them to her because Plaintiff Hansen could not reach over the counter.

79. Plaintiff Hansen had to request the employee come around the counter to pick up the shirts.

80. Plaintiff Hansen observed the counter is very long, and it took a while for the employee to come around to retrieve the items.

81. The employee came around the counter, retrieved the shirts and walked back around the counter. This took additional time as well.

82. The employee asked if Ms. Hansen could reach the point-of-sale device, and the employee tried to stretch the cord of the device over the top of the counter. The device would not reach over the high counter.

83. The employee spoke to another employee whom Plaintiff Hansen believed to be a manager. The manager told the employee to print out a paper receipt.

84. The employee printed the receipt and walked around the counter again to hand the receipt to Plaintiff Hansen.

85. Because of the inaccessibility of the counter, Plaintiff Hansen's purchase took much longer than it would have if the counter was accessible.

86. From the service counter, Plaintiff Hansen had to maneuver her wheelchair

around more display tables, furniture, plants and other fixtures to exit the store by the now-unlocked door she had used to enter; however, when Plaintiff Hansen pressed the accessible door button, the door did not open immediately. It seemed to Plaintiff Hansen like the door was stuck or not working properly because the door took a long time to open after she pressed button.

87. This store was one of the most difficult stores Plaintiff Hansen have been in with respect to accessibility.

88. Plaintiff Hansen was frustrated and humiliated throughout this shopping experience by the lack of accessibility.

89. Plaintiff Hansen went to the Hollister store at Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado, on August 19, 2009, and experienced accessibility barriers identified in this Complaint.

90. Plaintiff Hansen went to this store to return the shirts she had purchased previously at the Orchard Town Center Hollister store.

91. This store design and layout were similar to the store in the Orchard Town Center.

92. The front entrance to this store had steps blocking access for Plaintiff Hansen.

93. There was no sign at the front entrance directing a person in a wheelchair how to access the store.

94. Off to the right of the entrance porch, there was a small, hard-to-see button next to what looked like shutters.

95. Plaintiff Hansen pressed the button, and a door opened automatically in the



direction of her wheelchair.

96. Plaintiff Hansen had to back up quickly in her wheelchair to avoid being hit by the opening door.

97. The entrance was very narrow and difficult to get through in Plaintiff Hansen's wheelchair.

98. Plaintiff Hansen entered into the young men's side of the store.

99. Steps that led from the entrance porch the young women's side of the store made it impossible for Plaintiff Hansen to access that side of the store in her wheelchair.

100. As soon as Plaintiff Hansen entered the store, there was a table of merchandise that blocked her entrance.

101. No employee offered to help move the table, so Plaintiff Hansen had to get past the table by pushing it out of the way with her motorized wheelchair.

102. In order to get through the store, Plaintiff Hansen had no other choice but to use her wheelchair to push furniture, display tables and plants so she could make a path for herself to get through the store.

103. Plaintiff Hansen wanted to look at merchandise in the fragrance section, but her access to that section of the store was blocked by heavy furniture and other fixtures.

104. Plaintiff Hansen noticed that all of the merchandise displayed on fixed shelving around the exterior of the store was blocked by merchandise tables, furniture and plants, making it impossible for her to get close enough to look at merchandise there.

105. When Plaintiff Hansen got to the service counter, she discovered it was so high

that she could not see the top of it. This made it very difficult for Plaintiff Hansen to put the items she was returning on the service counter because she had to reach far above her head.

106. Plaintiff Hansen observed other customers standing at the counter who used the counter without difficulty.

107. Rather than having to ask the employee to walk all the way around the counter and back to get her signature, Plaintiff Hansen asked the employee to sign the point-of-sale device for the exchange.

108. Plaintiff Hansen exited the store frustrated and humiliated by the lack of accessibility.

109. In March of 2010, while shopping, Plaintiff Hansen went to the Hollister store in the Parkdale Mall, located at 6155 Eastex Freeway, Beaumont, Texas 77706.

110. Because of the barriers to accessibility Plaintiff Hansen had experienced earlier at the two previous Hollister stores, she was deterred from entering the store.

111. Plaintiff Hansen will shop at Defendants' Hollister stores, including the ones she shopped at or attempted to shop at, if Defendants remedy the inaccessibility. Plaintiff Hansen will visit Defendants' other Hollister stores in the Denver metropolitan area and elsewhere when she travels if Defendants make their stores accessible.

112. Plaintiff Hansen will return to the stores she has previously visited periodically to test whether accessibility barriers still exist.

113. Until the accessibility barriers are remedied, other than visiting Hollister stores to test accessibility, Plaintiff Hansen is and will continue to be deterred and discouraged from

going to Defendants' Hollister stores.

114. Plaintiff Robert Sirowitz has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint.

115. As set forth in this herein, Plaintiff Sirowitz intends to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

116. Plaintiff Sirowitz visits malls and other retail shopping complexes, including malls and shopping complexes in which there are Hollister stores, approximately four to five times per year, in order to shop for merchandise for himself, friends and relatives.

117. Plaintiff Sirowitz visited Defendants' Hollister store, located within the Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado, on the afternoon of July 8, 2009, with Joshua Stapen, who also uses a wheelchair, and experienced the accessibility barriers identified in this complaint.

118. Upon arriving at the Park Meadows Mall store, Plaintiff Sirowitz encountered a large porch-like structure that had steps at the entrance.

119. Because of the steps, Plaintiff Sirowitz was unable to access the entrance to the store.

120. Plaintiff Sirowitz looked for another entrance to access the store.

121. There was no sign at the porch-like entrance indicating to Plaintiff Sirowitz there was another accessible entrance.

122. Plaintiff Sirowitz did find what looked like a set of shutters with a small metal object next to them.

123. Plaintiff Sirowitz approached the small metal object and discovered it had a small, hard-to-see access symbol on it and it appeared to be a button.

124. When Plaintiff Sirowitz pressed the button, a door off to the side of the porch-like entrance opened.

125. The door opened in the direction of Plaintiff Sirowitz's wheelchair, so he had to move out of its way quickly to avoid being hit by it.

126. Plaintiff Sirowitz tried to enter the store, but he could not because there was a table full of merchandise blocking this entrance.

127. Plaintiff Sirowitz did not see any employee when Plaintiff Sirowitz tried to enter.

128. After several minutes, an employee came to the front of the store and after a few minutes, the employee moved the table that blocked Plaintiff Sirowitz's access to the store.

129. After the employee moved the table, Plaintiff Sirowitz entered the store and wanted to shop.

130. Plaintiff Sirowitz was able to get approximately three feet into the store where he encountered more display units, tables and merchandise, which blocked him from going further.

131. Plaintiff Sirowitz heard the store employee say that Plaintiff Sirowitz and Plaintiff Stapen, who was right behind Plaintiff Sirowitz, would not be able to shop in the store.

132. Plaintiff Sirowitz backed his wheelchair out of the store and left.

133. Plaintiff Sirowitz was very frustrated and humiliated by the lack of accessibility at the Park Meadows Hollister store.

134. Plaintiff Sirowitz intends to shop at Hollister stores, and will shop at the Hollister

store in Park Meadows Mall if this Hollister store is made accessible.

135. Plaintiff Sirowitz has been deterred from going back to the Park Meadows Hollister store he visited because of the lack of accessibility.

136. Plaintiff Sirowitz has been deterred from going to other Hollister stores because of their lack of accessibility.

137. Plaintiff Sirowitz intends to visit Defendants' Hollister store in Park Meadows Mall to test accessibility in the future.

138. Plaintiff Joshua Stapen has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint.

139. Plaintiff Stapen visits malls and other retail shopping complexes, including malls and shopping complexes in which Defendants maintain Hollister stores, approximately four to five times per year in order to shop for merchandise for himself, friends and relatives.

140. Plaintiff Stapen visited Defendants' Hollister store, located within the Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado, in the afternoon of July 8, 2009 with Robert Sirowitz, and experienced the accessibility barriers identified in this complaint.

141. When Plaintiff Stapen arrived at the Park Meadows Mall Hollister store, he did not see a way to access the store right away because there were steps at the front entrance. The steps led to a platform that looked like a porch with chairs and items displayed on it and appeared to be the only entrance to the store.

142. There was no sign at the entrance porch directing Plaintiff Stapen to an accessible

entrance. Plaintiff Stapen knew from similar circumstances that it is possible to identify an unmarked accessible entrance by the presence of a door opener button, but was not able to find the door opener button.

143. As Plaintiff Stapen and Plaintiff Sirowitz and prepared to leave, they saw someone exit the store from a door on the right side of the store. When Plaintiffs Stapen and Sirowitz got to the door they saw what looked like shutters -- which were indistinguishable from the rest of the exterior of the store -- but turned out to be a door.

144. Plaintiff Stapen followed Robert Sirowitz to the door and, when Plaintiff Sirowitz found a small button next to it and pressed it, Plaintiff Stapen attempted to follow him into the store.

145. Plaintiff Sirowitz entered the store and went in a short distance. Plaintiff Stapen was behind Plaintiff Sirowitz.

146. Suddenly, Plaintiff Sirowitz stopped, and Plaintiffs Sirowitz and Stapen were not able to get into the store because the area immediately in front of them was blocked by tables. Plaintiff Stapen was unable to enter the store.

147. One of the Hollister employees saw Plaintiffs Sirowitz and Stapen were unable to enter the store further and commented, "I can't move any more tables."

148. Plaintiff Stapen intends to shop and will shop at Defendants' Hollister stores, including the store located in the Park Meadows Mall, if Defendants remedy the barriers he encountered and others like them.

149. Plaintiff Stapen intends to and will visit Defendants' other Hollister stores in the

Denver metropolitan area and elsewhere when he travels if Defendants remedy the accessibility barriers similar to those he experienced.

150. Plaintiff Stapen intends to and will return to the Hollister store he visited to test whether the accessibility barriers have been remedied.

151. Other than to determine if Hollister stores are accessible, Plaintiff Stapen is and continues to be deterred and discouraged from going to Defendants' Hollister stores.

152. Plaintiff Stapen was humiliated and frustrated by his experience trying to enter the Hollister store in July of 2009.

153. Plaintiff Stapen would like to and will access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

154. Plaintiff Robin Stephens has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint.

155. Plaintiff Stephens visits malls and other retail shopping complexes, including malls and shopping complexes in which Defendants maintain Hollister stores, approximately four times per year, in order to shop for merchandise for herself, friends and relatives.

156. Plaintiff Stephens visited Defendants' Hollister store, located within the Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado, on July 15, 2009, and experienced the accessibility barriers identified in this complaint.

157. When Plaintiff Stephens arrived at the Park Meadows Hollister store, she did not see a way to access the store right away because there were steps at the front entrance.

158. The steps led to a porch-like platform with chairs and items displayed on it and

appeared to be the only entrance to the store.

159. There was no sign near the entrance porch directing Plaintiff Stephens to an accessible entrance.

160. After several minutes of searching, Plaintiff Stephens found what looked like shutters with a small button next to it. These shutters were indistinguishable from the rest of the shutters on the exterior of the store, and the button was small and difficult to find.

161. Once Plaintiff Stephens eventually located the button, she pressed it, but the door did not open and seemed to be locked.

162. Plaintiff Stephens saw a Hollister employee, who was standing nearby on the entrance porch and appeared to be on duty at the time. That employee watched while Plaintiff Stephens attempted to get the door to open, but the employee did not open the door or otherwise offer to assistance with opening the door.

163. Plaintiff Stephens tried to open the door for about ten minutes. During the entire time she struggled to open the door, the Hollister employee organized the displays on the entrance porch. Plaintiff Stephens left the Hollister store without ever having been able to enter the store.

164. Plaintiff Stephens was humiliated and frustrated by her experience.

165. Plaintiff Stephens intends to shop at Defendants' Hollister stores, including the store located in the Park Meadows Mall, if Defendants remedy the barriers to accessibility she experienced and those identified in the complaint. In addition, Plaintiff Stephens will visit Defendants' other Hollister stores in the Denver metropolitan area and elsewhere when she



travels if Defendants remedy the accessibility barriers she experienced.

166. Plaintiff Stephens intends to test Defendants' Hollister stores periodically to see whether accessibility barriers have been remedied.

167. Until the accessibility barriers Plaintiff Stephens encountered are remedied, she will be deterred and discouraged from going to Defendants' Hollister stores, other than to test accessibility, because of her frustrating and humiliating experience.

168. Plaintiff Benjamin Hernandez has visited Defendants' stores and experienced accessibility barriers identified in this complaint.

169. Plaintiff Hernandez visit malls and other retail shopping complexes, including malls and shopping complexes in which Defendants maintain Hollister stores, approximately two times per month, in order to shop for merchandise for himself, his friends and relatives.

170. Plaintiff Hernandez visited Defendants' Hollister store, located in the Orchard Towne Center at 14697 Delaware Street, Westminster, Colorado, on July 29, 2009, and experienced accessibility barriers identified in this complaint.

171. When Plaintiff Hernandez arrived at the Orchard Towne Center Hollister store, he did not see a way to access the store right away because there are steps at the front entrance. The steps led to a platform that looked like a porch with chairs and items displayed on it and which appeared to be the only entrance to the store.

172. Plaintiff Hernandez sat in front of the steps and yelled for an employee to come and assist, but no one ever came.

173. There was no sign near the main entrance, directing Plaintiff Hernandez to an

accessible entrance.

174. After remaining at the steps for several minutes, Plaintiff Hernandez began searching for an alternative entrance to the store. Plaintiff Hernandez had to search for several more minutes, but he eventually found what looked like shutters with a small button next to them. These shutters were indistinguishable from the rest of the shutters on the exterior of the store, and the button was small and had a corroded, oxidized look, that blended into the rest of the building, making it difficult to find.

175. The door that opened with the button opened on the “Betty’s” side of the store, which is the side of the store with women’s clothing. Plaintiff Hernandez intended to purchase a hoodie (a hooded sweatshirt) for himself, and Plaintiff Hernandez had to travel halfway through the store, passing in front of the service counter, in order to get to the “Dude’s” side, which is the side of the store with men’s clothes.

176. Plaintiff Hernandez noticed people who did not need to use wheelchairs could freely choose between entering directly into the Dude’s or Betty’s sections of the store because the stairs and the porch did not block their access.

177. After Plaintiff Hernandez got to the Dude’s side of the store, Plaintiff Hernandez was not able to access the outside walls where merchandise was displayed because clothing racks and tables blocked them.

178. When Plaintiff Hernandez asked an employee to help him find the hoodies, and the employee said that she could not leave the room, but that another employee in the part of the store with the hoodies could help him.

179. When Plaintiff Hernandez found the area of the store with hoodies, he could not reach the rack that held the hoodies. Plaintiff Hernandez asked the employee there if she could help him to the display of hoodies. The employee said that the rack did not move, but that Plaintiff Hernandez could tell the employee what he wanted and she would get it for him.

180. When Plaintiff Hernandez got to the service counter, he discovered it was very high all the way across, and it did not have a lowered portion so that Plaintiff Hernandez could reach the service counter. Because of the height of the service counter, Plaintiff Hernandez was deterred from making a purchase.

181. Plaintiff Hernandez was humiliated and frustrated by his experience.

182. Plaintiff Hernandez visited defendants' Hollister store located within the Park Meadows Mall at 8401 South Park Meadows Center Drive, Lone Tree, Colorado, just after Christmas of 2009, and experienced the accessibility barriers identified in this complaint.

183. Plaintiff Hernandez went to the Park Meadows Hollister store in late December of 2009 or early January of 2010 to shop for shirts during the after-holiday sales.

184. When Plaintiff Hernandez arrived at the Park Meadows Hollister store, he saw steps at the front entrance.

185. Plaintiff Hernandez observed customers entered and exited the store through this entrance with steps.

186. Because of the steps, Plaintiff Hernandez could not enter the store through this entrance.

187. Plaintiff Hernandez observed, like the Orchard Towne Center Hollister store, this

store had a small, hard-to-find button next to a set of what look like shutters off to the side of the main entrance.

188. Plaintiff Hernandez entered the store through these doors.

189. Once Plaintiff Hernandez entered the store, merchandise displays blocked his ability to get through the store, so he turned around and left.

190. Plaintiff Hernandez has been to Park Meadows Mall twice since trying to enter the Park Meadows Mall store. Plaintiff Hernandez has been deterred from entering or trying to shop at this store because of the lack of accessibility.

191. Plaintiff Hernandez would like to shop and will shop at Defendants' Hollister stores, including the stores located in the Orchard Towne Center and Park Meadows Mall, if Defendants remedy the inaccessibility.

192. Plaintiff Hernandez intends to visit Defendants' other Hollister stores in the Denver metropolitan area and elsewhere when he travels if Defendants remedy the accessibility barriers like those he experienced.

193. Plaintiff Hernandez will return to the Hollister store he visited in order to test whether accessibility barriers still exist.

194. Plaintiff CCDC is a membership organization having members who use wheelchairs.

195. As a result of Defendants' failures to make their stores accessible, CCDC has investigated and is investigating complaints by individuals who use wheelchairs about accessibility at Defendants' stores.

196. CCDC has filed two prior lawsuits against Defendant A&F Stores regarding wheelchair accessibility in two specific Abercrombie & Fitch Colorado stores, owned and operated by A&F Stores. These cases were resolved.

197. A&F Stores has been aware of the accessibility issues raised by CCDC in its stores for over fifteen years.

198. CCDC has members who use wheelchairs who have experienced and/or are likely to experience barriers to accessibility at Defendants' stores.

199. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- the goods, services, facilities, privileges, advantages, or accommodations provided by places of public accommodation.

200. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by the Defendants' violations of the laws cited herein.

201. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

202. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to communicating with Defendants in an attempt to secure non-discriminatory policies and store access.

203. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to counseling members and others who have been injured by Defendants' discrimination.

204. As set forth in this Complaint, Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities.

205. Defendants' discrimination has required and continues to require CCDC to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

206. CCDC also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendants.

207. CCDC's injuries -- including, without limitation, those described herein -- are traceable to Defendants' discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

208. CCDC's members and their spouses, friends, relatives, and associates have been injured and will continue to be injured by Defendants' discrimination.

209. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into all aspects of community life are at the core of CCDC's organizational purpose.

210. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

**FIRST CLAIM FOR RELIEF**

(On behalf of CCDC, the Class Representatives, and all others similarly situated for violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*)

211. Plaintiffs reallege and reincorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

212. Defendant A&F Stores owns and operates Hollister Co. stores throughout the United States.

213. A&F Co. is the parent company of A&F Stores.

214. A&F Stores is the owner of the subsidiary Hollister.

215. A&F Stores' Hollister Co. stores are places of public accommodation under 42 U.S.C. § 12181(7)(E).

216. All Hollister Co. stores were designed and constructed after the effective date of the ADA.

217. All Hollister Co. were required to be designed, constructed or altered so that they are readily accessible to and usable by individuals who use wheelchairs. 42 U.S.C. § 12183(a).

218. Hollister Co. stores were not designed and constructed to be readily accessible to and usable by individuals who use wheelchairs.

219. All Hollister Co. stores were required to be designed and constructed to comply with the Department of Justice's Standards for Accessible Design ("Standards"). 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.406; 28 C.F.R., pt. 36, app A.

220. Defendants' Hollister stores do not comply with the Standards.

221. Defendants are required to provide individuals who use wheelchairs full and equal enjoyment of their stores. 42 U.S.C. § 12182(a).

222. Defendants have failed and continue to fail to provide individuals who use wheelchairs the full and equal enjoyment of their Hollister Co. stores in the United States.

223. Defendants unlawfully discriminated against individuals who use wheelchairs and will continue to discriminate against individuals who use wheelchairs unless this Court orders an injunction prohibiting such discrimination.

224. Plaintiffs were damaged by Defendants' discrimination and will continue to be damaged by Defendants' discrimination unless this Court orders them to comply.

### **SECOND CLAIM FOR RELIEF**

(On behalf of the Individual Plaintiffs, all class members in Colorado and CCDC for violations of the Colorado Civil Rights Act "CCRA," Colo. Rev. Stat. § 24-34-601, *et seq.*)

225. Plaintiffs reallege and reincorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

226. Under the CCRA,

It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability . . . , the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation[.]

Colo. Rev. Stat. § 24-34-601(2).

227. Any person who violates section 601 above "shall be fined not less than fifty dollars nor more than five hundred dollars for each violation." Colo. Rev. Stat. § 24-34-602(1).

228. Defendants own and operate the stores about which Plaintiffs' complain in this



lawsuit.

229. Defendants are liable for the failures to comply with the CCRA.

230. The CCRA is to be construed consistently with the ADA and other federal civil rights statutes. 3 Colo. Code Regs. 708-1:60.1(C).

231. As set forth in this Complaint, Defendants have violated the CCRA by denying individuals who use wheelchairs the full and equal enjoyment of the goods, facilities, services and accommodations of their stores.

232. Defendants' violations of the CCRA have harmed Plaintiffs and will continue to harm Plaintiffs and Colorado class members unless the Court orders Defendants to comply.

233. Plaintiffs have been damaged and will continue to be damaged by Defendants' violations of the CCRA.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. that this Court certify the class identified in paragraph 47 pursuant to Rule 23 of the Federal Rules of Civil Procedure;
3. that this Court issue an injunction ordering Defendants to comply with the ADA with respect to all Hollister Co. stores nationwide and all Abercrombie & Fitch and abercrombie stores in Colorado;
4. that this Court award monetary damages to Plaintiffs to the maximum extent permitted;

5. that this Court award reasonable attorneys' fees and costs; and
6. that this Court award such additional or alternative relief as may be just,

proper and equitable.

**JURY DEMAND:** Plaintiffs demand a jury on all issues which can be heard by a jury.

Dated: August 30, 2010

Respectfully submitted,

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