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### PRESS RELEASE

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## Abercrombie & Fitch Liable for Religious Discrimination in EEOC Suit, Court Says

### *Judge Finds Firing Muslim Employee for Wearing Hijab Was Illegal*

SAN FRANCISCO - A federal judge has found clothing giant Abercrombie & Fitch liable for religious discrimination when it fired Muslim employee Umme-Hani Khan for wearing her hijab (religious headscarf), the U.S. Equal Employment Opportunity Commission (EEOC) announced today. The ruling came in an employment discrimination lawsuit filed by the federal agency in which Khan intervened.

According to the lawsuit, filed in 2011, 19-year-old Khan started working at the Hollister store (an Abercrombie & Fitch brand targeting teenagers aged 14 through 18) at the Hillsdale Shopping Center in San Mateo, Calif., in October 2009. As an "impact associate," the Muslim teen worked primarily in the stockroom. At first she was asked to wear headscarves in Hollister colors, which she agreed to do. However, in mid-February 2010, she was informed that her hijab violated Abercrombie's "Look Policy," a company-wide dress code, and was told she would be taken off schedule unless she removed her headscarf while at work. Khan was fired on Feb. 23 for refusing to take off the hijab that her religious beliefs compelled her to wear.

In an order issued September 3, U.S. District Judge Yvonne Gonzalez Rogers noted, "It is undisputed that Khan was terminated 'for non-compliance with the company's Look Policy.' Khan's only violation of the Look Policy was the headscarf." The court dismissed Abercrombie's argument that "its Look Policy goes to the 'very heart of [its] business model' and thus any requested accommodation to deviate from the Look Policy threatens the company's success," observing that "Abercrombie only offers unsubstantiated opinion testimony of its own employees to support its claim of undue hardship. The deposition testimony and declarations from Abercrombie witnesses demonstrate their personal beliefs, but are not linked to any credible evidence."

EEOC General Counsel David Lopez said, "No one should have to choose between keeping their faith and keeping their job. The court sent a clear message that it was illegal to fire Ms. Khan solely for wearing her hijab, and U.S. District Courts are

finding that Abercrombie cannot establish an undue hardship defense to the wearing of hijabs based on its 'Look Policy.' This is a clear victory for civil rights."

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on religion and requires employers to accommodate the sincere religious beliefs or practices of employees unless doing so would impose an undue hardship on the business. The EEOC filed suit (*EEOC & Khan v. Abercrombie & Fitch Stores, Inc. et al*, Case No. 11-CV-03162-YGR (N.D. Cal.) in U.S. District Court for the Northern District of California after first attempting to reach a pre-litigation settlement through its conciliation process. Two non-profit organizations, the Legal Aid Society/Employment Law Center and the Council on American-Islamic Relations, also represent Khan, who intervened in the case.

The court order (*U.S. Equal Employment Opportunity Commission v. Abercrombie & Fitch*, 2013 WL 4726 137, N.D. Cal., 2013) granted the EEOC's and Khan's motion for partial summary judgment and dismissed the following affirmative defenses asserted by Abercrombie: failure to exhaust administrative remedies; undue hardship; and infringement upon its First Amendment right to commercial free speech. The court also denied Abercrombie's cross-motion for summary judgment seeking a ruling that the EEOC failed to conciliate in good faith and dismissing the plaintiffs' claims for injunctive relief and punitive damages. Trial, now limited to damages and injunctive relief, is set for Sept. 30.

EEOC San Francisco Regional Attorney William R. Tamayo said, "Ms. Khan willingly color-coordinated her headscarf with the store's brand and capably performed her stockroom duties for four and half months until a visiting manager flagged her hijab as a violation of the company's 'Look Policy.' What undue burden did this retail giant face that prevented it from allowing her to practice her faith? None, clearly."

This is the third time that a district court has ruled against Abercrombie's undue hardship defense in cases involving Muslim employees or applicants wearing hijabs. In July 2011, a district court in Tulsa, Okla., [ruled](#) that it was religious discrimination for the company not to hire a Muslim applicant for a sales position due to her hijab. That case is pending on appeal in the 10th Circuit. In April, 2013, another judge in the Northern District of California ruled for the EEOC on the issue of undue hardship in an [unrelated case](#). That case is still awaiting the resolution of other legal and factual issues.

According to company information, Abercrombie & Fitch Co. operates retail stores under the brands Abercrombie & Fitch, for men and women over the age of 18; abercrombie kids targeting preteens between ages seven and 14; and Hollister Co. for teenagers aged 14 through 18, with more than 1,000 stores in North America.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at [www.eeoc.gov](http://www.eeoc.gov).