

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,

v.

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

Defendants.

SECOND AMENDED AND CLASS ACTION COMPLAINT

Plaintiffs, Colorado Cross-Disability Coalition, Anita Hansen, Robert Sirowitz, Joshua Stapen, Robin Stephens, and Benjamin Hernandez, by and through undersigned counsel, hereby submit this Second Amended Class Action Complaint, pursuant to Fed. R. Civ. P. 23 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 individual 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 its 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 Second Amended and Complaint at Defendants' Hollister Co. stores.

42. On information and belief, other CCDC members who use wheelchairs have experienced accessibility barriers at all of Defendants' Hollister Co. stores like those described in this Complaint, have been damaged by and will continue to be damaged by Defendants' unlawful discrimination.

43. 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.

44. 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.

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

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

47. 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.

48. 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.

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

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

51. 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.

52. 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.

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

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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

60. Plaintiffs reallege and reincorporate by reference all other allegations in this

Complaint herein.

61. Plaintiff Anita Hansen has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. Plaintiff Hansen would like to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

62. Plaintiff Robert Sirowitz has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. Plaintiff Sirowitz would like to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

63. Plaintiff Joshua Stapen has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. Plaintiff Stapen would like to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

64. Plaintiff Robin Stephens has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. Plaintiff Stephens would like to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

65. Plaintiff Benjamin Hernandez has visited Defendants' stores and experienced the accessibility barriers identified in this Complaint. Plaintiff Hernandez would like to access Defendants' stores in the future if Defendants remedy the ADA violations identified in this complaint.

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

67. 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.

68. 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.

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

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

71. 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.

72. 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.

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

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

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

81. 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.

82. 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 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.*)

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

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

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

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

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

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

89. 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).

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

91. 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.

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

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

94. 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.

95. Defendants unlawfully discriminated against class members and will continue to discriminate against class members unless this Court orders an injunction prohibiting such discrimination.

96. Class members 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.*)

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

98. 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(1).

99. Any person who violates section 601 above "shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the person aggrieved thereby"

Colo. Rev. Stat. § 24-34-602(1).

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

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

102. The CCRA is to be construed consistently with the ADA and other federal civil

rights statutes. 3 Colo. Code Reg. 708.60.1(c).

103. 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.

104. 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.

105. 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 49 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: April 5, 2010

Respectfully submitted,

/s/ Kevin W. Williams

Kevin W. Williams

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