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 17 Stephanie Charles, and Meghan Watumull

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20	JILLIAN HALLMAN, an individual,)	Case No. CV13-02139 ODW ISS
21	Plaintiff,)	
22	vs.)	DEFENDANTS' RESPONSE TO
23)	PLAINTIFF'S STATEMENT OF
24	ABERCROMBIE & FITCH CO., an)	MATERIAL FACTS
25	Ohio Corporation; STEPHANIE)	Judge: Hon. Otis D. Wright
26	CHARLES, an individual; MEGHAN)	Courtroom: 11 - Spring St. Floor
27	WATUMULL, an individual; DOES)	Date: September 23, 2013
28	1-25, Inclusive,)	Time: 1:30 p.m.
	Defendants.)	
)	

**DEFENDANTS’ RESPONSE TO HALLMAN’S
STATEMENT OF MATERIAL FACTS**

Defendants Abercrombie & Fitch Stores, Inc., Stephanie Charles, and Meghan Watumull (“Defendants”) hereby submit the following response to Plaintiff Jillian Hallman’s (“Hallman”) Statement of Material Facts (Doc. 32 at 60-77.)

Hallman’s Material Fact	Defendants’ Response
<p>1. Jillian Hallman, an African-American woman, was employed by Abercrombie & Fitch, Co. (hereinafter “Defendant”), as a visual manager starting in July 2010.</p>	<p><u>Hallman’s Evidence:</u> (Statement of Material Fact (“SMF”) 1; Exhibit 1 - Hallman Depo., at pp. 28:3-5; Exhibit 2 - Hallman’s Employment Records.)</p> <p><u>Defendants’ Response:</u> Disputed. Jillian Hallman (“Hallman”) was employed by Abercrombie & Fitch Stores, Inc. Hallman was hired as a Manager in Training (“MIT”) in July 2010. Hallman was later promoted to an Assistant Manger (“AM”) in October 2010. <i>See also</i> Defendants’ Objections to Evidence regarding Exhibit 2.</p> <p><u>Defendants’ Evidence:</u> Hallman Dep. at 28, 30, 42-43; Shamika Marsh (“Marsh”) Decl. at ¶ 3.</p>

1 2. During her employment at A&F, she
2 never had any problems with her co-
3 managers and associates.
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Hallman's Evidence:
(SMF 2; Exhibit 3 - Commendation on
Hallman's Work Performance.)

Defendants' Response:
Disputed. Hallman received multiple
write-ups for poor performance,
including being written up for having a
hostile conversation with another
manager. *See also* Defendants'
Objections to Evidence.

Defendants' Evidence:
Hallman Dep. at 125-26, 133-34, 149,
171-72, 173-74, 176-77, 178-80, Exs.
7, 12-17; Charles Dep. at 123-27, 129,
Ex. 8

18 3. A&F has a documented history of
19 racial discrimination and denying its
20 employees mandated meal and rest
21 breaks. During Ms. Hallman's
22 employment, a class action lawsuit
23 was litigated against A&F for
24 numerous violations of the Labor
25 Code—including failing to provide
26 meal and rest breaks—which was
27 settled. However, Ms. Hallman
28 found out that she was a class

Hallman's Evidence:
(SMF 3; Exhibit 4 - Declaration of
Amanda J. Myette and attached Notice
of Class Action Settlement.)

Defendants' Response:
Disputed. The cited evidence does not
support Hallman's allegation that A&F
has a documented history of racial
discrimination and denying its
employees mandated meal and rest

1 member only after her employment
2 with A&F was terminated.

breaks. The cited evidence also shows
that Hallman received proper notice of
the class settlement and that she did not
opt out of the settlement. *See also*
Defendants' Objections to Evidence.

Defendants' Evidence:

Declaration of Amanda J. Myette at ¶¶
9-11, 13, Exs. A-B

10 4. As an A&F employee Ms. Hallman
11 was regularly denied meal and rest
12 periods, due to A&F's failure to
13 schedule sufficient employees per
14 shift.

Hallman's Evidence:

(SMF 4; Exhibit 1 - Hallman Depo., at
pp. 92:4-93:5.)

Defendants' Response:

Disputed. As a manger, Hallman was
required to understand, adhere to and
enforce Abercrombie's break policy.
She was responsible for taking her own
breaks. Hallman was informed she
needed to take breaks in accordance
with Abercrombie's policy and was
written up for failing to take proper
breaks. *See also* Defendants'
Objections to Evidence.

Defendants' Evidence:

Hallman Dep. at 92, 149, Ex. 7; Marsh
Decl. at ¶ 5; Charles Dep. at 67-68, 81;

1	Charles Decl. at ¶ 8.
<p>2 5. Significantly, Ms. Hallman</p> <p>3 complained to Human Resources and</p> <p>4 Meghan Watumull, Regional</p> <p>5 Manager at A&F regarding the</p> <p>6 company's failure to provide meal</p> <p>7 and rest breaks.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p><u>Hallman's Evidence:</u></p> <p>(SMF 5; Exhibit 5 - Charles Depo., at pp. 66:8-67:18; Exhibit 1 - Hallman Depo., at p. 43:23-24; and pp.89:15-90:25.)</p> <p><u>Defendants' Response:</u></p> <p>Disputed. There is no evidence that Hallman ever complained to Watumull regarding failure to provide meal and rest breaks. Hallman complained to HR about failing to receive meal and rest breaks after she was written up for failing to take meal and rest breaks. <i>See also</i> Defendants' Objections to Evidence.</p> <p><u>Defendants' Evidence:</u></p> <p>Marsh Decl. at ¶ 5; Hallman Dep. at 149, Ex. 7.</p>
<p>22 6. Although Ms. Hallman requested</p> <p>23 that her complaints be kept</p> <p>24 confidential, Shamika Marsh knew</p> <p>25 about Ms. Hallman's complaints and</p> <p>26 informed Charles.</p> <p>27</p> <p>28</p>	<p><u>Hallman's Evidence:</u></p> <p>(SMF 6; Exhibit 5 - Charles Depo., at pp. 66:8-67:18; Exhibit 1 - Hallman Depo., at p. 91:1-25.)</p> <p><u>Defendants' Response:</u></p> <p>Disputed in part. The cited evidence</p>

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does not establish that Ms. Hallman requested that her complaints be kept confidential. Marsh was informed about Hallman’s complaint so that HR could investigate Hallman’s complaint. *See also* Defendants’ Objections to Evidence.

Defendants’ Evidence:
Marsh Decl. at ¶ 5.

7. Interestingly, in a declaration – clearly drafted by A&F attorneys – Shamika Marsh denies that Ms. Hallman complained about not being allowed to take meal and rest breaks; even though Charles testified at her deposition that that Marsh told her that Ms. Hallman had made such complaints.

Hallman’s Evidence:
(SMF 7; Marsh Decl., at ¶ 12; Exhibit 5 - Charles Depo., at pp. 66:8-67:18.).

Defendants’ Response:
Disputed. Marsh’s declaration does not deny that Hallman complained about not being allowed to take meal and rest breaks. Marsh’s declaration states that she was aware Hallman contacted HR to complain that she was not being given her breaks after Marsh issued Hallman a Poor Performance Note for failing to take breaks during her shifts on multiple occasions. *See also* Defendants’ Objections to Evidence.

Defendants’ Evidence:

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	Marsh Decl. at ¶ 5.
8. Ironically, Ms. Hallman was retaliated against for her complaints when she was reprimanded for failing to take her breaks and meal periods.	<p><u>Hallman’s Evidence:</u> (SMF 8; Exhibit 6 - Write-up for Failing to Take Breaks and Meal Periods.)</p> <p><u>Defendant’s Response:</u> Disputed. Hallman was issued a Poor Performance Note for failing to take breaks prior to her complaining that she was not being given her breaks. She was not reprimanded after she complained about not receiving breaks. <i>See also</i> Defendants’ Objections to Evidence.</p> <p><u>Defendants’ Evidence:</u> Marsh Decl. at ¶ 5.</p>
9. A&F has a history against discriminating against African American minorities. In August 2003, a class action was brought by minority employees and applicants for employee positions.	<p><u>Hallman’s Evidence:</u> (SMF 9; See Exhibit 7 – <i>Gonzalez v. Abercrombie & Fitch Co., at al.</i> Class Action Complaint.)</p> <p><u>Response:</u> Disputed. The cited evidence does not support Hallman’s allegation that A&F has a history against discriminating</p>

<p>1</p> <p>2</p> <p>3</p>	<p>against African American minorities. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>4 10. The lawsuit alleged that</p> <p>5 Abercrombie implemented its</p> <p>6 discriminatory employment policies</p> <p>7 and practices in part through a</p> <p>8 detailed and rigorous “Appearance</p> <p>9 Policy,” which required that all</p> <p>10 Employees must exhibit the “A&F</p> <p>11 Look.” The “A&F Look” was a</p> <p>12 virtually all-white image that</p> <p>13 Abercrombie used not only to market</p> <p>14 its clothing, but also to implement its</p> <p>15 discriminatory employment policies</p> <p>16 or practices. When people who did</p> <p>17 not fit the “A&F Look” inquired</p> <p>18 about employment, managers would</p> <p>19 sometimes tell them that the store is</p> <p>20 not hiring, or provide them with</p> <p>21 applications even though they had no</p> <p>22 intention of considering them for</p> <p>23 employment.</p>	<p><u>Hallman’s Evidence:</u> (SMF 10; See Exhibit 7 – <i>Gonzalez v. Abercrombie & Fitch Co., et al.</i> Class Action Complaint.)</p> <p><u>Defendants’ Response:</u> Disputed. This allegation is not supported by admissible evidence. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>24 11. A&F published and distributed to its</p> <p>25 employees a “Look Book” that</p> <p>26 explained the importance of the</p> <p>27 Appearance Policy and the “A&F</p> <p>28 Look,” and that closely regulated the</p>	<p><u>Hallman’s Evidence:</u> (SMF 11; See Exhibit 7 – <i>Gonzalez v. Abercrombie & Fitch Co., et al.</i> Class Action Complaint.)</p>

<p>1 employees' appearance. A&F 2 required its managers to hire and 3 continue to employ only employees 4 who fit within the narrow confines of 5 the "Look Book." This resulted in a 6 disproportionately white employee 7 workforce.</p>	<p><u>Defendants' Response:</u> Disputed. This allegation is not supported by admissible evidence. <i>See</i> <i>also</i> Defendants' Objections to Evidence.</p>
<p>8 12. After rigorous litigation, a Consent 9 Decree was entered into and 10 implemented by a Court Appointed 11 Monitor.</p>	<p><u>Hallman's Evidence:</u> (SMF 12; See Exhibit 8 – <i>Gonzalez v.</i> <i>A&F</i> Consent Decree Fact Sheet.)</p> <p><u>Defendants' Response:</u> Disputed. This allegation is not supported by admissible evidence. <i>See</i> <i>also</i> Defendants' Objections to Evidence.</p>
<p>17 13. The Decree ordered numerous 18 measures to curb A&F's 19 discriminatory practices, such as 20 creating a new Office and Vice 21 President of Diversity, creating 22 "Benchmarks" for diversity, etc. (Id.) 23 Still, on April 1, 2011, the Special 24 Master overseeing the <i>Gonzalez</i> 25 Consent Decree held that A&F had 26 failed to comply with its obligations 27 in that it had not used "Best Efforts" 28 to determine whether alternative</p>	<p><u>Hallman's Evidence:</u> (SMF 13; See Exhibit 9 - Order Affirming Special Master's Decision; also see Exhibit 10 - Executive Summary of Court-Appointed Monitor's Fourth Annual Compliance Report.)</p> <p><u>Defendants' Response:</u> Disputed. This allegation is not supported by admissible evidence. <i>See</i> <i>also</i> Defendants' Objections to</p>

1 selection criteria for employees
2 would cause less adverse impact;
3 although A&F had used “Best
4 Efforts” to reach certain benchmarks
5 for hiring minorities – but the
6 African-American Benchmark was
7 consistently missed.

Evidence.

8 14. During Ms. Hallman’s employment,
9 A&F still published and distributed
10 to its employees a “Look Book.”
11 Despite the Judicial Decree,
12 discrimination similar to that alleged
13 in *Gonzalez* was still present during
14 Ms. Hallman’s employment. Even
15 after the Decree was implemented,
16 the “A&F Look” continued to be
17 geared toward individuals who had
18 “white” features – such as women
19 with straight flowing long hair. And
20 even though A&F dubbed certain
21 managers “Diversity Champions,”
22 slapping a clean label on a box does
23 not change the contents of the box.

Hallman’s Evidence:

(SMF 14; Exhibit 1- Hallman Depo., at pp.58:1-59:5; Hallman Depo., at pp.66:12-67:3).

Defendants’ Response:

Disputed. The cited evidence does not support Hallman’s allegations, including her allegations that “discrimination similar to that alleged in *Gonzalez* was still present during Ms. Hallman’s employment,” “[e]ven after the Decree was implemented, the ‘A&F Look’ continued to be geared toward individuals who had ‘white’ features—such as women with straight flowing long hair” and “[a]nd even though A&F dubbed certain managers ‘Diversity Champions,’ slapping a clean label on a box does not change the contents of the box.” Hallman was

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specifically recruited to work at Abercrombie. During Hallman’s employment, Abercrombie was looking to recruit and hire African-American women. Charles has been named a “Diversity Champion,” and her essay on diversity was published in Abercrombie’s Diversity and Inclusion Book. *See also* Defendants’ Objections to Evidence.

Defendants’ Evidence:
Hallman Dep. at 28-29, 63-65; Charles Dep. at 90-91; Marsh Decl. at ¶ 14.

15. After being hired at A&F, Ms. Hallman was discriminated against and harassed by management. In the early months of 2011, while discussing recruitment and citing the Look Book during a weekly management meeting, the store manager candidly remarked that, “the company wants to recruit people that don’t have hair like Jillian’s.”

Hallman’s Evidence:
(SMF 15; Exhibit 1 - Hallman Depo., at pp.58:1-59:5; Hallman Depo., at pp.66:12-67:3).

Defendants’ Response:
Disputed. The cited evidence does not establish that Hallman was discriminated against and harassed by management. Hallman testified that the store manager stated “we’re looking to recruit people, how do I say this, with hair not like Jillian’s.” The store manager is of Filipino and

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<p>Egyptian decent, and Hallman does not claim that he discriminated, harassed, or retaliated against her. <i>See also</i> Defendants’ Objections to Evidence.</p> <p><u>Defendants’ Evidence:</u> Hallman Dep. at 32, 55, 58-59, 93.</p>
<p>8 16.Humiliated, Ms. Hallman bought</p> <p>9 hair extensions the next day, and</p> <p>10 wore them in her hair for every shift.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	<p><u>Hallman’s Evidence:</u> (SMF 16; Exhibit 1 - Hallman Depo., at p. 60:3-7.)</p> <p><u>Defendants’ Response:</u> Disputed. Hallman wore hair extensions to work prior to the time the comment that “we’re looking to recruit people with hair not like Jillian’s” was made.</p> <p><u>Defendants’ Evidence:</u> Iskowitz Decl. at ¶ 6.</p>
<p>21 17.When Charles became District</p> <p>22 Manger, she showed hostility and</p> <p>23 rude behavior toward Ms. Hallman</p> <p>24 during her frequent visits to the A&F</p> <p>25 branch where Ms. Hallman was</p> <p>26 employed. Charles cursed and tried</p> <p>27 to intimidate Ms. Hallman.</p> <p>28</p>	<p><u>Hallman’s Evidence:</u> (SMF 17; See Exhibit 11 First Amended Complaint at ¶ 12).</p> <p><u>Defendants’ Response:</u> Disputed. This allegation is not supported by any admissible evidence. <i>See also</i> Defendants’ Objections to</p>

1	Evidence.
<p>2 18.Charles made her intentions of trying 3 to get rid of Ms. Hallman known; 4 and Mallory Day, Ms. Hallman’s co- 5 worker, and Mr. Cornelius, 6 Plaintiff’s store manager told Ms. 7 Hallman that Defendant Charles was 8 watching her like and hawk and 9 trying to get rid of her.</p>	<p><u>Hallman’s Evidence:</u> (SMF 18; Exhibit 1 - Hallman Depo., at pp. 112:2-11; 112:20-113:4; 139:20- 140:8; and 195:2-196:4; Exhibit 12 - Facebook Conversation with Day).</p> <p><u>Defendants’ Response:</u> Disputed. This allegation is not supported by any admissible evidence. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>14 19.On July 26, 2011, Ms. Hallman 15 spoke to Charles who suddenly 16 disclosed to her that an associate 17 named Noah had a negative 18 perception of her. Charles even 19 added that she herself thought 20 negatively of Ms. Hallman. In return, 21 Ms. Hallman called Noah to ask 22 about his feelings towards her. Noah 23 quickly explained to her that he did 24 not have a negative perception of 25 her. After that, Noah voluntarily 26 approached Charles and offered his 27 explanation stating that he had no 28 problem with Ms. Hallman.</p>	<p><u>Hallman’s Evidence:</u> (SMF 19; Exh. 1 - Hallman Depo., at pp. 125:19-129:19.)</p> <p><u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation. Hallman left her shift two hours early, leaving a MIT, Noah, to close the store. As a result, several items on the closing checklist were not completed. When Charles asked the MIT why items had not been completed, he explained that Hallman left early and he was unsure about his duties. Charles then spoke to</p>

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Hallman, who confirmed that she had left early. Shortly thereafter, Charles overheard Hallman call the MIT and yell that he “threw her under the bus.” Charles then met with Hallman to discuss her hostile conversation. *See also* Defendants’ Objections to Evidence.

Defendants’ Evidence:
Charles Dep. at 123-27, Ex. 8; Hallman Dep. at 125-26.

20. In a twist of events, Charles gave Ms. Hallman a write-up for having a “hostile conversation” with Noah, and Charles used a stereotypical African-American hand gesture as she told Ms. Hallman that she “put him on blast.” Charles waved her hand around and shook her neck while she spoke, depicting the movements of a stereotyped black female in an attempt to characterize how Ms. Hallman spoke.

Hallman’s Evidence:
(SMF 20; Exh.1 - Hallman Depo., at pp.136:2-139:9.)

Defendants’ Response:
Disputed in part. Hallman was written up for having a hostile conversation with Noah. There is no evidence that Charles used a stereotypical African-American hand gesture or depicted the movements of a stereotyped black female in an attempt to characterize how Hallman spoke. Hallman testified she does not know what “put him on blast” means and did not testify that it was discriminatory. Hallman testified

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<p>only that Charles snapped her fingers and shook her head. Charles did not say anything about Hallman’s race.</p> <p><u>Defendants’ Evidence:</u> Charles Dep. at 123, 127, 129, Ex. 8; Hallman Dep. at 129, 133-34, 136-37.</p>
<p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p>21. Although mortified, Ms. Hallman explained to Charles what really happened, and was able to convince her that there was no hostility between Noah and her.</p> <p><u>Hallman’s Evidence:</u> (SMF 21; Exh.1 - Hallman Depo., at p. 130:23-132:16.)</p> <p><u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation. Charles was present during Hallman’s hostile conversation with Noah and overheard the conversation.</p> <p><u>Defendants’ Evidence:</u> Charles Dep. 126.</p>
<p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>22. Ms. Hallman even sent a note to Noah clarifying the issues between them.</p> <p><u>Hallman’s Evidence:</u> (SMF 22; Exhibit 13 - Hallman’s Note to Noah 07.28.11.)</p> <p><u>Defendants’ Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting</p>

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	this allegation. <i>See also</i> Defendants’ Objections to Evidence.
23.Charles thereby withdrew the unjustified write-up.	<u>Hallman’s Evidence:</u> (SMF 23; Exh. 1 - Hallman Depo., at p. 135:10-17.) <u>Defendants’ Response:</u> Disputed. Hallman was written up for having a hostile conversation with Noah. <u>Defendants’ Evidence:</u> Charles Dep. at 123, 127, 129, Ex. 8; Hallman Dep. at 133-34.
24.Before the store manager left for the day, Ms. Hallman had him check her employment records for any write-ups. Plaintiff and the store manager verified that there was no write-up of any kind in her file that day.	<u>Hallman’s Evidence:</u> (SMF 24; Exh. 1 - Hallman Depo., at pp. 142:18-144:1). <u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation. The cited evidence establishes that the store manager informed Hallman that she had at least one write-up in her file. Hallman was written up multiple times during her employment.

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p><u>Defendants' Evidence:</u></p> <p>Hallman Dep. at 125-26, 133-34, 149, 171-72, 173-74, 176-77, 178-80, Exs. 7, 12-17; Charles Dep. at 123-27, 129, Ex. 8.</p>
<p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>25. On July 28, 2011, Watumull visited the store and had a walk-through with Ms. Hallman and Charles.</p> <p><u>Hallman's Evidence:</u></p> <p>(SMF 25; FAC at ¶ 19).</p> <p><u>Defendants' Response:</u></p> <p>Disputed. Hallman has not submitted any admissible evidence in support of this allegation. <i>See also</i> Defendant' Objections to Evidence.</p>
<p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>26. Also during that day, the store manager disclosed to Ms. Hallman that during his exit interview from the company, Charles said that she was planning to terminate Ms. Hallman's employment, and would be harassing her in order to trigger a response worthy of termination.</p> <p><u>Hallman's Evidence:</u></p> <p>(SMF 26; Exh. 1 - Hallman Depo., at pp. 112:2-11; 112:20-113:4; 139:20-140:8; and 195:2-196:4; Exh. 11 - FAC at ¶ 20).</p> <p><u>Defendants' Response:</u></p> <p>Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendant' Objections to Evidence.</p>
<p>26</p> <p>27</p> <p>28</p>	<p>27. Ms. Hallman was convinced that she was in a hostile workplace because of Charles. Ms. Hallman then</p> <p><u>Hallman's Evidence:</u></p> <p>(SMF 27; Exh. 1 - Hallman Depo., at pp. 76:7 – 78:19; 83:5 –15; Exh. 11 -</p>

1 requested a meeting with Watumull
2 to report a grievance. Watumull
3 responded that Ms. Hallman should
4 call her, and they would talk.
5 Hallman then called Watumull the
6 next day and left a voice message,
7 again mentioning the fact that she
8 believed she was being harassed by
9 Defendant Charles. However,
10 Watumull never returned her call.
11 Plaintiff did all that she was required
12 to do pursuant to A&F's complaint
13 policy.

FAC at ¶ 19).

Defendants' Response:

Disputed. The cited evidence does not support Hallman's allegation. Hallman testified that just two days before she went on leave she requested a meeting with Watumull "because some things were going on in the store that seemed different from anyplace I've ever worked before." Hallman then left Watumull a voicemail stating that she wanted to meet with her because things were "difficult in the store" and she felt like she was being harassed. Hallman never mentioned anything about her race to Watumull or stated that she thought she was being racially harassed. Hallman testified that she understood that under Abercrombie's equal employment opportunity policy she was to contact HR if she was subjected to any conduct that violated the equal employment opportunity policy.

Defendants' Evidence:

Hallman Dep. at 39, 78-79, 168;

<p>1</p> <p>2</p>	<p>Watumull Decl. at ¶ 3. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>3 28. At 6:00 p.m. that evening when Ms. 4 Hallman returned from break, she 5 found several write-ups from 6 Defendant Charles.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p><u>Hallman’s Evidence:</u> (SMF 28; Exhibit 14 - Write-ups Against Hallman</p> <p><u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation.</p>
<p>11 29. Ms. Hallman was shocked to see 12 several of them, when just a few 13 days ago the store manager said that 14 she held a clean record. Ms. Hallman 15 then called Charles four times about 16 the write-ups, but she did not receive 17 a response.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p><u>Hallman’s Evidence:</u> (SMF 29; Exh. 1 - Hallman Depo. at pp. 142:18 – 143:1; Exh.11 – FAC at ¶ 19).</p> <p><u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation. The cited evidence establishes that the store manager informed Hallman that she had at least one write-up in her file. Hallman was written up multiple times during her employment.</p> <p><u>Defendants’ Evidence:</u> Hallman Dep. at 125-26, 133-34, 149, 171-72, 173-74, 176-77, 178-80, Exs. 7, 12-17; Charles Dep. at 123-27, 129,</p>

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30. On July 30, 2011, Ms. Hallman's work schedule was changed two hours before her shift was supposed to start

Ex. 8.

Hallman's Evidence:
(SMF 30; Exh. 1 - Hallman Depo. at pp. 102:23-104:1; Exhibit 15 - SMS Communication on Hallman's Schedule Change.)

Defendants' Response:
Disputed. Abercrombie has a mandatory weekly schedule that is set by the home office in Ohio. The weekly schedule is made available every Monday. Hallman knew the days and times she was supposed to work under the mandatory schedule. She also knew that her store was expected to adhere to the mandatory schedule and that any changes needed to be approved in advance by Charles. Hallman asserts that on two occasions she entered or requested from her SM, without Charles' approval, a shift time that was contrary to the mandatory schedule, and when she checked the schedule the day before her shift, her shift had been returned to the mandatory time. Upon realizing this, Hallman texted Charles to ask what to

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<p>do. Charles told her to abide by the mandatory schedule.</p> <p><u>Defendants' Evidence:</u> Hallman Dep. at 47-48, 103, 105, 115-16, 158-59, Ex. 9; Charles Dep. at 16, 20, 22, 137, 140-41.</p>
<p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>31. One of the other managers told Ms. Hallman that Charles was watching her like a hawk, and that she should not even be a second late.</p> <p><u>Hallman's Evidence:</u> (SMF 31; Exh. 1 - Hallman Depo. at pp. 111:3 -113:4).</p> <p><u>Defendants' Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendants' Objections to Evidence.</p>
<p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>32. That evening at about 11:30 p.m., Ms. Hallman was notified again of an abrupt schedule change to her 9:00 a.m. shift for the following day.</p> <p><u>Hallman's Evidence:</u> (SMF 32; Exh. 1 - Hallman Depo., at pp.102:23-1-3:22.)</p> <p><u>Defendants' Response:</u> Disputed. Abercrombie has a mandatory weekly schedule that is set by the home office in Ohio. The weekly schedule is made available every Monday. Hallman knew the days and times she was supposed to</p>

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work under the mandatory schedule. She also knew that her store was expected to adhere to the mandatory schedule and that any changes needed to be approved in advance by Charles. Hallman asserts that on two occasions she entered or requested from her SM, without Charles' approval, a shift time that was contrary to the mandatory schedule, and when she checked the schedule the day before her shift, her shift had been returned to the mandatory time. Upon realizing this, Hallman texted Charles to ask what to do. Charles told her to abide by the mandatory schedule.

Defendants' Evidence:
Hallman Dep. at 47-48, 103, 105, 115-16, 158-59, Ex. 9; Charles Dep. at 16, 20, 137, 140-41.

33. Understandably, Ms. Hallman was distressed about the hostility to which she was subjected. She went on a medical leave on August 1, 2011, because of a stomach ache and constant vomiting due to severe stress and anxiety.

Hallman's Evidence:
(SMF 33; Exh. 1 - Hallman Depo., at pp. 144:18 – 145:11; Exhibit 16 - Hallman's Medical Records re Stress.)
Defendants' Response:
Disputed in part. There is no evidence

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>that Hallman was subjected to hostility. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>5 34.A&F granted Ms. Hallman FMLA</p> <p>6 leave.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p><u>Hallman’s Evidence:</u> (SMF 34; Exhibit 17 - Approval of FMLA Leave.)</p> <p><u>Defendants’ Response:</u> Disputed in part. Hallman was placed on FMLA in accordance with the FMLA on August 1, 2011.</p> <p><u>Defendants’ Evidence:</u> Adam Strodbeck (“Strodbeck”) Decl. at ¶ 3; Charles Dep. at Ex. 17.</p>
<p>18 35.While Plaintiff was on leave, several</p> <p>19 managers called to let her know that</p> <p>20 Charles devised a plan to get rid of</p> <p>21 her permanently from the company.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	<p><u>Hallman’s Evidence:</u> (SMF 35; Exh. 1 - Hallman Depo., at p. 195:4-25.)</p> <p><u>Defendants’ Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>28 36.Apparently, Charles wanted to hire</p>	<p><u>Hallman’s Evidence:</u></p>

<p>1 “better looking” managers for A&F. 2 This was verified by Amanda 3 Iskowitz, another manager. 4 5 6 7 8</p>	<p>(SMF 36; Exh. 1 - Hallman Depo., at p. 195:2-196:4.)</p> <p><u>Defendants’ Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>9 37. Ms. Hallman continued to experience 10 severe stress and on August 11, 11 2011, she went to urgent care for 12 treatment of hives. 13 14 15 16 17</p>	<p><u>Hallman’s Evidence:</u> (SMF 37; Exhibit 18 - Hallman’s Medical Records re Hives).</p> <p><u>Defendants’ Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendants’ Objections to Evidence.</p>
<p>18 38. While on leave, Ms. Hallman timely 19 responded to all A&F’s requests for 20 medical documentation to support 21 her leave. 22 23 24 25 26 27 28</p>	<p><u>Hallman’s Evidence:</u> (SMF 38; Exhibit 16 - Hallman’s Medical Records.)</p> <p><u>Defendants’ Response:</u> Disputed. Hallman has not submitted admissible evidence supporting this allegation. Hallman was informed on November 7, 2011 that she needed to return to work by November 14, 2011 or she would be terminated. Hallman</p>

<p>1 2 3 4 5 6 7 8</p>	<p>did not respond to this letter or return to work. <i>See also</i> Defendants’ Objections to Evidence.</p> <p><u>Defendants’ Evidence:</u> Hallman Dep. at 52, 213, 215, Ex. 27; Strodtbeck Decl. at ¶ 8.</p>
<p>9 10 11 12 13 14 15 16 17 18 19 20 21 22</p> <p>39.Plaintiff was confused about a conflicting IME schedule set by Defendants, therefore she called to inquire about the discrepancy so that she could attend the Independent Medical Examination on the correct day. But, the discrepancy was never remedied, despite Ms Hallman’s attempts to make herself available for any date that could be accurately confirmed.</p>	<p><u>Hallman’s Evidence:</u> (SMF 39; Exh. 1 Hallman Depo., at pp. 209:15-213:4.)</p> <p><u>Defendants’ Response:</u> Disputed. The cited evidence does not support Hallman’s allegation. Hallman did not show up for the independent medical examination scheduled by Sedgwick. <i>See also</i> Defendants’ Objections to Evidence.</p> <p><u>Defendants’ Evidence:</u> Hallman Dep. at 211.</p>
<p>23 24 25 26 27 28</p> <p>40.In a continuing effort to harass Plaintiff, A&F then sent a letter contending that Ms. Hallman refused to attend the Independent Medical Examination (IME), and demanded that she send more documentation</p>	<p><u>Hallman’s Evidence:</u> (SMF 40; Exhibit 22 – Dr. Ahaddian October Doctor’s Notes; Exh. 11 FAC at ¶ 31).</p> <p><u>Defendants’ Response:</u></p>

1 evidencing her continuing disability;
2 despite the fact that Ms. Hallman's
3 doctor sent a number of detailed
4 medical updates to A&F and
5 Sedgwick throughout October—
6 including on October 11, 13, 18, 20,
7 and 29.

Disputed. Hallman has not submitted
any admissible evidence supporting
this allegation. Hallman did not show
up for the independent medical
examination scheduled by Sedgwick.
Hallman was informed on November 7,
2011 that she needed to return to work
by November 14, 2011 or she would be
terminated. Hallman did not respond
to this letter or return to work. *See*
also Defendants' Objections to
Evidence.

Defendants' Evidence:

Hallman Dep. at 52, 211, 213, 215, Ex.
27; Strodbeck Decl. at ¶ 8.

17 41. The Sedgwick Disability Specialist
18 handling Ms. Hallman's case, wrote
19 in his notes that Ms. Hallman had
20 been in contact with him often about
21 confusion with the IME dates and
22 her willingness to attend.

Hallman's Evidence:

(SMF 41; Exhibit 23 – Sedgwick Case
Log.).

Defendants' Response:

Disputed. Hallman has not submitted
any admissible evidence supporting
this allegation. Hallman did not show
up for the independent medical
examination scheduled by Sedgwick.
See also Defendants' Objections to
Evidence.

	<p><u>Defendants' Evidence:</u> Hallman Dep. at 211.</p>
<p>42. After consulting A&F, Ms. Hallman's disability benefits were discontinued, even though Ms. Hallman clearly and adamantly protested, and Dr. Ahaddian called Garcia directly and explained to him over the telephone that Ms. Hallman was "severely disabled," and her leave should be continued.</p>	<p><u>Hallman's Evidence:</u> (SMF 42; Exhibit 23 – Sedgwick Case Log).</p> <p><u>Defendants' Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. Hallman did not show up for the independent medical examination scheduled by Sedgwick. Hallman was informed on November 7, 2011 that she needed to return to work by November 14, 2011 or she would be terminated. Hallman did not respond to this letter or return to work. <i>See also</i> Defendants' Objections to Evidence.</p> <p><u>Defendants' Evidence:</u> Hallman Dep. at 52, 211, 213, 215, Ex. 27; Strodbeck Decl. at ¶ 8.</p>
<p>43. Despite Plaintiff's compliance with Defendants' leave requirements, on or about November 7, 2011, A&F terminated Ms. Hallman.</p>	<p><u>Hallman's Evidence:</u> (SMF 43; Exhibit 24 - Hallman's Termination Notice.)</p>

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Defendants' Response:
Disputed. Abercrombie's policy provides that employees are entitled to the amount of leave permitted under the FMLA (twelve weeks), but that if they fail to return at the expiration of that time, they may be terminated. Hallman failed to return to work despite receiving more than twelve weeks of leave. Hallman was informed on November 7, 2011 that she needed to return to work by November 14, 2011 or she would be terminated. Hallman did not respond to this letter or return to work. Hallman was terminated on November 14, 2011 for failing to return to work after receiving her exhausting her leave entitlement.

Defendants' Evidence:
Hallman Dep. at 52, 213, 215, Ex. 1 at 18 [A&F0148], Ex. 27; Strodtbeck Decl. at ¶¶ 4-9, Ex. 1 at 18 [A&F0148], Ex. 2 at 19 [A&F0178].

44. Nevertheless, after being hired at A&F, Ms. Hallman was present during a weekly store management meeting where recruitment of

Hallman's Evidence:
(SMF 44; Exh. 1 Hallman Depo., at pp. 93:6-8; Hallman Depo., at pp.58:1-59:5; Hallman Depo., at pp.62:5-12;

1 employees was being discussed.
2 A&F's management team, including
3 Defendant Charles, was referring to
4 and citing A&F's "Look Book"
5 during the weekly management
6 meeting. The "Look Book" is a
7 binder with photos of what recruits
8 should look like. The store manager
9 Cornelius candidly remarked that,
10 the company wants to recruit people
11 that don't have hair like [Plaintiff]
12 Jillian's. Defendant Charles then
13 added, "yeah, we're looking for
14 people who have curly hair." At the
15 time these comments were made, the
16 management team was pointing to
17 what appeared to be an African
18 American bi-racial individual with
19 Caucasian features as it discussed the
20 type of look African American
21 recruits should have.
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Hallman Depo., at pp 63:23-64:7;
Hallman Depo., at pp 66:12-67:3).

Defendants' Response:

Disputed. Hallman testified that the store manager stated "we're looking to recruit people, how do I say this, with hair not like Jillian's." The store manager is of Filipino and Egyptian decent, and Hallman does not claim that he discriminated, harassed, or retaliated against her. Hallman testified that Charles then stated, "Yeah, we're looking for people who have curly hair." There is no evidence supporting Hallman's allegation that the woman in the "Look Book" was an African American bi-racial with Caucasian features. Hallman was specifically recruited to work at Abercrombie. During Hallman's employment, Abercrombie was looking to recruit and hire African-American women. *See also* Defendants' Objections to Evidence.

Defendants' Evidence:

Hallman Dep. at 28-29, 32, 58-59, 63-

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	65, 93.
<p>45.Humiliated by the above comments, Ms. Hallman bought hair extensions the next day, and wore them in her hair for every shift thereafter. (Exh. 1 Hallman Depo., at p.60:3-7.) Charles also told Plaintiff that she had a “little black cloud over her.”</p>	<p><u>Hallman’s Evidence:</u> (SMF 45; Exh. 1 Hallman Depo. at p. 81:1-7; pg. 82:4-16).</p> <p><u>Defendants’ Response:</u> Disputed. Hallman wore hair extensions to work prior to the time the comment that “we’re looking to recruit people with hair not like Jillian’s” was made. Hallman testified that when Charles was telling Hallman what she needed to do to improve the store, Charles said the store was gloomy and referenced the character Eeyore from Winnie the Pooh to make the analogy that the store had had a “little black cloud” over it. Hallman was unable to identify anything about this alleged statement that was discriminatory.</p> <p><u>Defendants’ Evidence:</u> Iskowitz Decl. at ¶ 6; Hallman Dep. at 80-81.</p>
<p>46.Defendant Charles gave Ms. Hallman a write-up for having an alleged “hostile conversation” with a</p>	<p><u>Hallman’s Evidence:</u> (SMF 46; Exh. 1 - Hallman Depo., at pp.136:2-139:9.)</p>

1 co-worker named Noah. During the
2 conversation, Charles used
3 stereotypical African-American hand
4 gestures as she told Ms. Hallman that
5 she “put him [Noah] on blast,” (a
6 stereotypical slang phrase). As
7 Charles made this comment, she
8 waved her hand around, and shook
9 her neck while she spoke, depicting
10 the movements of a stereotyped
11 black female in an attempt to
12 characterize how Ms. Hallman
13 allegedly spoke to her co-worker
14 Noah.

Defendants’ Response:

Disputed in part. Hallman was written up for having a hostile conversation with Noah. There is no evidence that Charles used a stereotypical African-American hand gesture, used a stereotypical slang phrase, or depicted the movements of a stereotyped black female in an attempt to characterize how Hallman spoke. Hallman testified she does not know what “put him on blast” means and did not testify that it was discriminatory. Hallman testified only that Charles snapped her fingers and shook her head. Charles did not say anything about Hallman’s race.

Defendants’ Evidence:

Hallman Dep. at 129, 133-34, 136-37; Charles Dep. at 123, 127, 129, Ex. 8.

22 47. Two days later, on July 28, 2011, the
23 store manager Cornelius disclosed to
24 Ms. Hallman that during his exit
25 interview from the company, Charles
26 said that she was planning to
27 terminate Ms. Hallman’s
28 employment, and would be harassing

Hallman’s Evidence:

(SMF 47; Exh. 1 - Hallman Depo., at pp. 112:2-11; 112:20-113:4; 139:20-140:8).

Defendants’ Response:

Disputed. Hallman has not submitted

1 her in order to trigger a response
2 worthy of termination.

any admissible evidence supporting
this allegation. *See also* Defendants'
3 Objections to Evidence.

4 48.A&F's anti-discrimination and
5 harassment policy serves no purpose
6 because it was ignored by
7 Defendants. Plaintiff did what she
8 was required to do pursuant to
9 A&F's harassment/discrimination
10 complaint policy in complaining
11 about harassment/discrimination she
12 was being subjected to in the
13 workplace.

Hallman's Evidence:
(SMF 26 and 48; Exh. 1 - Hallman
Depo., at pp. 76:7 — 78:19; 83:5-15;
Exh. 11 FAC at ¶ 19).

Defendants' Response:
Disputed. Hallman has not submitted
any evidence establishing that A&F's
anti-discrimination and harassment
policy serves no purpose or that it was
ignored by Defendants. Hallman never
informed any of her DMs, her RM, or
HR that she was being subjected to
alleged discrimination or racial
harassment while she was actively
working for Abercrombie. The first
time Abercrombie learned that Hallman
believed that she was subjected to
racial discrimination or harassment was
on September 7, 2011 while reviewing
her request for leave. Abercrombie's
Benefits department noticed that in
Hallman's leave paperwork she
claimed "depression due to feeling
targeted at work because of her race."

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This information was forwarded to Jen Hunt in HR, who immediately began investigating Hallman’s assertion. Hunt first interviewed Charles, who was “shocked,” and informed Hunt that she “absolutely” did not engage in any racial discrimination or harassment of Hallman. Hunt then attempted on multiple occasions to contact Hallman, but Hallman never returned her calls. Because Hallman refused to speak with her, Hunt closed her investigation.

Defendants’ Evidence:
Hallman Dep. at 39, 78-79, 94-96, 107-08, 168; Hunt. Decl. at ¶ 3; Marsh Decl. at ¶ 6; Charles Dep. at 97; Charles Decl. at ¶ 10; Watumull Decl. at ¶ 3..

49.Ms. Hallman complained to Human Resources and Meghan Watumull, Regional Manager at A&F regarding the company’s failure to provide meal and rest breaks.

Hallman’s Evidence:
(SMF 49; Exh. 1 - Charles Depo., at pp. 66:8-67:18; Hallman Depo., at p. 43:23-24; and pp.89:15- 90:25.)
Defendants’ Response:
Disputed. There is no evidence that Hallman ever complained to Watumull regarding failure to provide meal and

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rest breaks. Hallman complained to HR about failing to receive meal and rest breaks after she was written up for failing to take meal and rest breaks. *See also* Defendants' Objections to Evidence.

Defendants' Evidence:
Marsh Decl. at ¶ 5; Hallman Dep. at 149, Ex. 7.

50. In addition, Ms. Marsh made it clear to Plaintiff that she was upset with Plaintiff because of Plaintiff's complaints of not receiving rest and meal breaks.

Hallman's Evidence:
(SMF 50; Exh. 1 - Hallman Depo., at p. 91:1-25.)

Defendants' Response:
Disputed. Hallman has not submitted any evidence supporting this allegation. In October 2010, Marsh wrote Hallman up for failing to take proper breaks. Hallman subsequently contacted HR and asserted that she was not receiving breaks. HR contacted Marsh to investigate Hallman's contentions. Marsh did not retaliate against Hallman in any way. *See also* Defendants' Objections to Evidence.

Defendants' Evidence:

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	Marsh Decl. at ¶ 5-7; Hallman Dep. at 54-55, 149-50, Ex. 7.
51.Plaintiff suffered and continues to suffer severe emotional distress.	<u>Hallman’s Evidence:</u> (SMF 51; Exhibits 16, 18, and 22 Plaintiffs medical records. <u>Defendants’ Response:</u> Disputed. Hallman has not submitted any admissible evidence supporting this allegation. <i>See also</i> Defendants’ Objections to Evidence.

Dated: September 9, 2013 CAROTHERS DISANTE & FREUDENBERGER LLP and
VORYS, SATER, SEYMOUR AND PEASE LLP

/s/ Tyler B. Pensyl
Tyler B. Pensyl

Attorneys for Defendants Abercrombie & Fitch
Stores, Inc., Stephanie Charles, and Meghan
Watumull