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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

17
18 FAINE DAVIS, individually, and on) **Case No. 4:11-CV-3956-CW**
behalf of all others similarly situated,)
19) **PUTATIVE CLASS ACTION**
Plaintiff,)
20) **STIPULATION AND [~~PROPOSED~~] ORDER**
vs.) **GRANTING LEAVE TO FILE FIRST**
21) **AMENDED COMPLAINT**
NORDSTROM, INC., and DOES 1)
22 through 50, inclusive,)
23 Defendants.)
24)
25)
26)
27)
28)

1 Representative Plaintiff Faine Davis (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, and Defendant Nordstrom, Inc. (“Defendant”), by and through their respective
3 counsel of record, hereby agree and stipulate as follows:

4 WHEREAS, on August 11, 2011, Plaintiff filed her Complaint for Damages with this Court,
5 asserting the following alleged claims for relief: (1) Unlawful Failure to Pay Overtime Wages; (2)
6 Failure to Provide Meal and Rest Periods; (3) Failure to Provide Accurate Wage Statements; (4)
7 Failure to Pay Wages on Termination; and (5) Unfair Business Practices under the Unfair
8 Competition Act.

9 WHEREAS, on September 16, 2011, Nordstrom filed a Motion to Compel Arbitration of
10 Plaintiff’s alleged claims;

11 WHEREAS, on September 30, 2011, Plaintiff filed her Opposition to Nordstrom’s Motion to
12 Compel Arbitration, and Nordstrom subsequently filed its Reply brief on October 7, 2011;

13 WHEREAS, on October 18, 2011, the Court issued an Order finding this case related to a
14 another pending case, *Algee v. Nordstrom, Inc.*, Case No. 11-1301 CW, and set new briefing
15 deadlines on Nordstrom’s Motion to Compel Arbitration;

16 WHEREAS, on October 28, 2011, the Court issued a Minute Order granting Nordstrom’s
17 Administrative Motion Requesting Clarification, confirming that “no additional briefing [was]
18 necessary on the Motion to Compel Arbitration;

19 WHEREAS, on October 31, 2011, Plaintiff filed an Administrative Motion for Leave to File
20 a Sur-reply; Nordstrom timely opposed that Motion, and to date, the Court has not issued any ruling
21 concerning Plaintiff’s request for a Sur-reply;

22 WHEREAS, on November 28, 2011, the Court continued the hearing on Nordstrom’s Motion
23 to Compel Arbitration from December 8 to December 15, 2011, on its own Motion;

24 WHEREAS, on December 7, 2011, the Court granted the Parties’ Stipulation to continue the
25 hearing date on Nordstrom’s Motion until December 22, 2011, which remains set for hearing on that
26 date;

27
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1 WHEREAS, Plaintiff seeks to file a First Amended Complaint to add claims for relief under
2 California’s Private Attorneys’ General Act (“PAGA”);

3 WHEREAS, Plaintiff sent a letter through to the California Labor and Workforce
4 Development Agency (“LWDA”) on or around November 11, 2011;

5 WHEREAS, Plaintiff agrees she will not seek to file any additional briefing on Nordstrom’s
6 Motion to Compel Arbitration based upon the addition of any PAGA claims, except that Plaintiff
7 reserves the right to address the issue through any Sur-reply that may yet be permitted by the Court;

8 WHEREAS, Plaintiff agree she will not seek any postponement or continuance of the hearing
9 on Nordstrom’s Motion to Compel Arbitration;

10 WHEREAS, in exchange for Plaintiff’s agreement not to seek additional briefing concerning
11 PAGA claims in opposing Nordstrom’s Motion to Compel Arbitration, Nordstrom agrees and
12 stipulates to the filing of Plaintiff’s First Amended Complaint without waiving any defenses and/or
13 arguments it may have in substantive opposition thereto.

14 **THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and between the
15 Parties, through their respective counsel of record, as follows:

16 1. The Parties stipulate and agree that Plaintiff can file her First Amended Complaint to
17 add additional claims under the Private Attorneys’ General Act (“PAGA”), and subject to the
18 approval of the Court, the proposed First Amended Complaint shall be in the form attached hereto as
19 Exhibit “A.”

20 2. Nordstrom expressly does not waive any defenses and/or arguments it may have in
21 substantive opposition to any potential PAGA claims asserted by Plaintiff.

22 3. Plaintiff agrees that she will not seek to file any additional briefing in opposition to
23 Nordstrom’s Motion to Compel Arbitration based upon the addition of any potential PAGA claims,
24 except that Plaintiff reserves the right to address the issue through any Sur-reply that may yet be
25 permitted by the Court. Plaintiff further agrees she will not seek any postponement or continuance
26 of the December 15, 2011 hearing on said motion based on her new PAGA claims.
27
28

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IT IS SO STIPULATED.

Dated: December 15, 2011

SCOTT COLE & ASSOCIATES, APC

By: /s/ Hannah R. Salassi
Hannah R. Salassi, Esq.
Attorneys for the Representative Plaintiffs
and the Plaintiff Class

Dated: December 15, 2011

LITTLER MENDELSON, P.C.

By: /s/ Matthew J. Sharbaugh
Matthew J. Sharbaugh, Esq.
Attorneys for Defendant
Nordstrom, Inc.

PROPOSED ORDER

**UPON GOOD CAUSE APPEARING, AND PURSUANT TO THE STIPULATION
BETWEEN PARTIES, THE COURT HEREBY ORDERS AS FOLLOWS:**

Leave is hereby Granted for Plaintiff to file their First Amended Complaint upon entry of this
Order.

IT IS SO ORDERED.

Dated: 12/16/2011



Honorable Claudia Wilken
United States District Judge

EXHIBIT A

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7 Attorneys for Representative Plaintiff
and the Plaintiff Class

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

12 FAINE DAVIS, individually, and on) **Case No. CV-11-3956 CW**
behalf of all others similarly situated,)
13) **CLASS ACTION**
Plaintiff,)
14) **FIRST AMENDED COMPLAINT FOR**
vs.) **DAMAGES, INJUNCTIVE RELIEF, AND**
15) **RESTITUTION**
NORDSTROM, INC.,)
16) **[DEMAND FOR JURY TRIAL]**
Defendant.)
17)
18)

19 Representative Plaintiff alleges as follows:

21 **PRELIMINARY STATEMENT**

22 1. This is a class action, brought on behalf of Faine Davis (hereinafter
23 “Representative Plaintiff”) and all other persons similarly situated (“Class Members”) who are or
24 were employed as salaried Department Managers by defendant Nordstrom, Inc. (“Defendant”
25 and/or “Nordstrom”) in any Nordstrom retail location in California within the applicable class
26 period. The Representative Plaintiff, on behalf of herself and the Class Members, seeks unpaid
27 wages, including unpaid overtime compensation, compensation for missed meal and rest periods,
28 interest thereon and other penalties, injunctive and other equitable relief, and reasonable

1 attorneys' fees and costs under, inter alia., Title 8 of the California Code of Regulations,
2 California Business and Professions Code §§17200, *et seq.*, California Code of Civil Procedure
3 §1021.5, and various provisions of the California Labor Code.

4 2. The Class Period is designated as the time from August 11, 2007 through the date
5 of trial or settlement, based upon the allegation that the violations of California's wage and hour
6 laws, as described more fully below, have been ongoing throughout that time.

7 3. During the Class Period, Nordstrom has had a consistent policy of (1) permitting,
8 encouraging and/or requiring its allegedly overtime-exempt salaried Department Managers,
9 including the Representative Plaintiff and Class Members, to work in excess of eight hours per
10 day and in excess of forty hours per week without paying them overtime compensation as
11 required by California's wage and hour laws, (2) unlawfully failing to provide the Representative
12 Plaintiff and Class Members statutorily-mandated meal and rest periods, and (3) willfully failing
13 to provide the Representative Plaintiff and the Class Members with accurate semi-monthly
14 itemized wage statements reflecting the total number of hours each worked, the applicable
15 deductions, and the applicable hourly rates in effect during the pay period.

16 4. In addition, Representative Plaintiff alleges, on information and belief, that
17 Nordstrom has had a consistent policy of willfully failing to pay compensation (including unpaid
18 overtime) in a prompt and timely manner to certain Class Members whose employment with
19 Nordstrom has terminated.

20
21 **INTRODUCTION**

22 5. Nordstrom Inc. is a publically traded company on the New York Stock Exchange
23 whose principal activity is operating retail stores which offer various forms of merchandise,
24 including clothing, accessories, handbags, jewelry, cosmetics, fragrances and home furnishings.
25 In 2009, Nordstrom reported over 8 billion dollars in revenue.

26 6. Nordstrom operates more than 450 retail stores across the nation, including the
27 one in which Representative Plaintiff worked as a Department Manager. The Representative
28 Plaintiff is informed and believes and, on that basis, alleges that within the Class Period,

1 Nordstrom employed numerous individuals in California in recent years who occupied salaried
2 Department Manager positions at Nordstrom retail locations in California, employment positions
3 which did not, and currently do not, meet any known test for exemption from the payment of
4 overtime wages and/or the entitlement to meal or rest periods.

5 7. Despite actual knowledge of these facts and legal mandates, Nordstrom has and
6 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
7 by electing not to pay premium (overtime, meal and rest period wages) and/or “penalty” (a.k.a.
8 “waiting time”) wages to its Department Managers at its California retail locations.

9 8. Representative Plaintiff is informed and believes and, based thereon, alleges that
10 officers of Nordstrom knew of these facts and legal mandates yet, nonetheless, repeatedly
11 authorized and/or ratified the violation of the laws cited herein.

12 9. Despite Nordstrom’s knowledge of Class Members’ entitlement to overtime pay
13 and meal and/or rest periods for all applicable work periods, Nordstrom failed to provide the
14 same to the Class Members thereof, in violation of California state statutes, the applicable
15 California Industrial Welfare Commission Wage Order, and Title 8 of the California Code of
16 Regulations. This action is brought to redress and end this long-time pattern of unlawful conduct
17 once and for all.

18
19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over the Representative Plaintiff’s and Class
21 Members’ claims for unpaid wages and/or penalties under, *inter alia*, the applicable California
22 Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations,
23 California Labor Code §§ 201-204, 226.7, 510, 512, 1194, 1198, 2699, California Code of Civil
24 Procedure § 1021.5, and 28 U.S.C. § 1332(d)(2)(A). In addition, the amount in controversy
25 exceeds \$5,000,000, exclusive of interest and costs. Therefore, this Court has original
26 jurisdiction under 28 U.S.C. § 1332(a).

27 11. This Court also has jurisdiction over Representative Plaintiff’s and Class
28 Members’ claims for injunctive relief and restitution of ill-gotten benefits arising from

1 Nordstrom’s unfair and/or fraudulent business practices under California Business & Professions
2 Code § 17200, *et seq.*

3 12. Venue as to Defendant is proper in this judicial district, pursuant to 28 U.S.C. §
4 1391. Defendant maintains stores in the Northern District of California and transacts business,
5 has agents, and is otherwise within this Court’s jurisdiction for purposes of service of process.
6 The unlawful acts alleged herein have a direct effect on the Representative Plaintiffs and those
7 similarly situated within this judicial district. Nordstrom operates said facilities and has
8 employed numerous Class Members in this judicial district as well as throughout the State of
9 California.

10
11 **PLAINTIFF**

12 13. Representative Plaintiff Faine Davis is a natural person who has been employed
13 as a Department Manager at Nordstrom stores located in Glendale, Los Angeles and Redondo
14 Beach, California, during the Class Period. Representative Plaintiff is currently employed as a
15 Department Manager at the Nordstrom store located in the South Bay Galleria in Redondo
16 Beach, California.

17 14. As used throughout this Complaint, the term “Class Members” refers to the
18 Representative Plaintiff herein as well as each and every person eligible for membership in the
19 class of persons as further described and defined herein.

20 15. At all times herein relevant, the Representative Plaintiff was and is now a person
21 within the class of persons further described and defined herein.

22 16. The Representative Plaintiff bring this action on behalf of herself and as a class
23 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons similarly
24 situated and proximately damaged by the unlawful conduct described herein.

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1 **DEFENDANT**

2 17. At all times herein relevant, Nordstrom was and is a Washington corporation with
3 retail locations located within this judicial district and across California.

4 18. Representative Plaintiff is informed and believes and, on that basis, alleges that
5 Nordstrom has, and does, directly and/or indirectly employed and/or exercised control over the
6 wages, hours and working conditions of the Representative Plaintiff and the Class Members.

7
8 **CLASS ACTION ALLEGATIONS**

9 19. Representative Plaintiff brings this action individually and as a class action on
10 behalf of all persons similarly situated and proximately damaged by Nordstrom's conduct
11 including, but not necessarily limited to, the following Plaintiff Class:

12 "All persons who were employed as Department Managers by
13 Defendant in one or more of its Nordstrom retail locations in
14 California at any time on or after August 11, 2007"

15 20. Nordstrom, its officers, and directors are excluded from the Plaintiff Class.

16 21. This action has been brought and may properly be maintained as a class action
17 under Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined
18 community of interest in the litigation and the proposed Class is easily ascertainable:

19 a. Numerosity: A class action is the only available method for the fair and
20 efficient adjudication of this controversy. The members of the Plaintiff Class
21 are so numerous that joinder of all members is impractical, if not impossible,
22 insofar as Representative Plaintiff is informed and believes and, on that basis,
alleges that there are sufficient Class Members to meet the numerosity
requirement. Membership in the Class will be determined upon analysis of
employee and payroll, among other, records maintained by Nordstrom.

23 b. Commonality: The Representative Plaintiff and the Class Members share a
24 community of interests in that there are numerous common questions and
25 issues of fact and law which predominate over any questions and issues
solely affecting individual members, including, but not necessarily limited to:

26 1) Whether defendant Nordstrom violated IWC Wage Order and/or
27 Labor Code §510 by failing to pay overtime compensation to its
salaried Department Managers who worked in excess of forty hours
per week and/or eight hours per day;

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- 2) Whether defendant Nordstrom violated California Business and Professions Code §17200, *et seq.* by failing to pay overtime compensation to its salaried Department Managers who worked in excess of forty hours per week and/or eight hours per day;
 - 3) Whether defendant Nordstrom violated California Labor Code §1174 by failing to keep accurate records of employees’ hours of work;
 - 4) Whether defendant Nordstrom violated California Labor Code §§201-204 by failing to pay overtime wages due and owing at the time that certain Class Members’ employment with Defendant terminated;
 - 5) Whether defendant Nordstrom violated California Labor Code §226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
 - 6) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code §203.
- c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendants’ common course of conduct in violation of law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

22. As described herein, for years Nordstrom has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned

1 (including premium wages such as overtime wages and/or compensation for missed meal and/or
2 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
3 enjoying a significant competitive edge over other retailers.

4 23. Nordstrom has declined to pay these wages, even upon a Class Member's
5 termination or resignation from employment, in blatant violation of California Labor Code §201
6 and/or §202.

7 24. California Labor Code §§201 and 202 require Defendant to pay severed
8 employees all wages due and owed to the employee immediately upon discharge or within 72
9 hours of resignation of their positions, in most circumstances. California Labor Code §203
10 provides that an employer who willfully fails to timely pay such wages must, as a penalty,
11 continue to pay the subject employees' wages until the back wages are paid in full or an action is
12 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

13 25. Furthermore, despite its knowledge of the Representative Plaintiff' and the Class
14 Members' entitlement to compensation for all hours worked, Defendant violated California
15 Labor Code §1174(d) by failing to provide or require the use, maintenance, or submission of
16 time records by members of the class. Nordstrom also failed to provide the Representative
17 Plaintiff and Class Members with accurate semimonthly itemized statements of the total number
18 of hours worked by each, and all applicable hourly rates in effect, during the pay period, in
19 violation of California Labor Code §226. In failing to provide the required documents,
20 Defendant has not only failed to pay its workers the full amount of compensation due but the
21 company has also, until now, effectively shielded itself from its employees' scrutiny by
22 concealing the magnitude and financial impact of its wrongdoing that such documents might
23 otherwise have led workers to discover.

24 26. Representative Plaintiff and all persons similarly situated are entitled to unpaid
25 compensation, yet, to date, have not received such compensation despite many of the same
26 having been terminated by and/or resigned from Nordstrom. More than 30 days have passed
27 since certain Class Members have left Defendant's employ.

28 ///

1 27. As a consequence of Defendant’s willful conduct in not paying former employees
2 compensation for all hours worked in a prompt and timely manner, certain Class Members are
3 entitled to up to 30 days wages as a penalty under Labor Code §203, together with attorneys’
4 fees and costs.

5 28. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
6 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
7 including compensation for loss of earnings for hours worked on behalf of Defendant, in an
8 amount to be established at trial. As a further direct and proximate result of Defendant’s
9 unlawful conduct, as set forth herein, certain Class Members are entitled to recover “waiting
10 time” penalties (pursuant to California Labor Code §203) and penalties for failure to provide
11 semimonthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code
12 §226) in an amount to be established at trial. As a further direct and proximate result of
13 Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and Class Members
14 are also entitled to recover costs and attorneys’ fees pursuant to California Labor Code §1194
15 and/or California Civil Code §1021.5, among other authorities.

16 29. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
17 engaging in the complained-of illegal labor acts and practices in the future. Representative
18 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
19 under California’s Unfair Competition Law. Unless enjoined, Defendant’s unlawful conduct will
20 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
21 of Defendant’s unlawful conduct. As a further direct and proximate result of Defendant’s
22 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also
23 entitled to recover costs and attorneys’ fees, pursuant to statute.

24 30. Plaintiff complied with the procedures for bringing suit specified in California
25 Labor Code § 2699.3, by letter dated November 11, 2011. Plaintiff gave written notice by
26 certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of
27 the specific provisions of the California Labor Code alleged to have been violated, including the
28 facts and theories to support these violations.

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FIRST CLAIM FOR RELIEF
UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(Violation of IWC Wage Order 7 and Labor Code §§ 510, 1194, and 1198)

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31. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

32. During the Class Period, the Representative Plaintiff and the Class Members worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise number of overtime hours will be proven at trial.

33. During the Class Period, Defendant refused to compensate the Representative Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable IWC Wage Order and provisions of the California Labor Code.

34. Moreover, during said time period, many of the Class Members herein were employed by and thereafter terminated or resigned from their positions with Nordstrom yet were not paid all wages due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment of all wages due was the direct and proximate result of a willful refusal to do so by Nordstrom.

35. At all relevant times, Defendant was aware of, and was under a duty to comply with, the overtime provisions of the California Labor Code including, but not limited to, California Labor Code §§510, 1194, and 1198.

36. California Labor Code §510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee

37. California Labor Code §1194(a), in pertinent part, provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

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38. California Labor Code §1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

39. By refusing to compensate the Representative Plaintiff and Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

40. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Nordstrom, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

SECOND CLAIM FOR RELIEF
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

41. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

42. At all relevant times, Nordstrom was aware of and was under a duty to comply with California Labor Code §226.7 and §512.

43. California Labor Code §226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

44. Moreover, California Labor Code §512(a) provides:

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An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

45. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

46. Section 11 of the applicable IWC Wage Order provides:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...
- (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

47. Moreover, Section 12 of the applicable IWC Wage Order provides:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

///

1 48. By failing to consistently provide uninterrupted thirty-minute meal periods within
2 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to
3 Representative Plaintiff and the Class Members, Defendant violated the California Labor Code
4 and applicable IWC Wage Order provisions.

5 49. Representative Plaintiff is informed and believes and, on that basis, alleges that
6 Defendant has never paid the one hour of compensation to any Class Members due to its
7 violations of the California Labor Code and applicable IWC Wage Order provisions.

8 50. As a direct and proximate result of Nordstrom unlawful conduct, as set forth
9 herein, Representative Plaintiff and Class Members have sustained damages, including lost
10 compensation resulting from missed meal and/or rest periods, in an amount to be established at
11 trial.

12 51. As a further direct and proximate result of Defendant's unlawful conduct, as set
13 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in
14 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to
15 statute.

16
17 **THIRD CLAIM FOR RELIEF**
18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
19 **(California Labor Code §§ 226 and 1174)**

20 52. Representative Plaintiff incorporates in this claim for relief each and every
21 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
22 herein.

23 53. California Labor Code §226(a) provides:

24 Each employer shall semimonthly, or at the time of each payment
25 of wages, furnish each of his or her employees either as a
26 detachable part of the check, draft or voucher paying the
27 employee's wages, or separately when wages are paid by personal
28 check or cash, an itemized wage statement in writing showing: (1)
gross wages earned; (2) total number of hours worked by each
employee whose compensation is based on an hourly wage; (3) all
deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item; (4) net
wages earned; (5) the inclusive date of the period for which the
employee is paid; (6) the name of the employee and his or her

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social security number; and (7) the name and address of the legal entity which is the employer.

54. Moreover, California Labor Code §226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

55. Finally, California Labor Code §1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

56. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these provisions on behalf of themselves and on behalf of all Class Members.

57. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with Labor Code §226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

58. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members have sustained damages in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

59. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

1 60. California Labor Code §203 provides that:

2 If an employer willfully fails to pay, without abatement or
3 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
4 any wages of an employee who is discharged or who quits, the
5 wages of the employee shall continue as a penalty from the due
6 date thereof at the same rate until paid or until an action therefor is
7 commenced; but the wages shall not continue for more than 30
8 days.

9 61. Numerous Class Members were employed by Nordstrom during the class period
10 and were thereafter terminated or resigned from their positions, yet they were not paid all
11 premium (overtime) wages due upon said termination or within 72 hours of said resignation of
12 employment therefrom. Said non-payment was the direct and proximate result of a willful refusal
13 to do so by Nordstrom.

14 62. More than thirty days has elapsed since certain Class Members were involuntarily
15 terminated or voluntarily resigned from Defendant’s employ.

16 63. As a direct and proximate result of Defendant’s willful conduct in failing to pay
17 said Class Members for all hours worked, affected Class Members are entitled to recover
18 “waiting time” penalties of up to thirty days’ wages pursuant to Labor Code §203 in an amount
19 to be established at trial, together with interest thereon, and attorneys’ fees and costs.

20 **FIFTH CLAIM FOR RELIEF**
21 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
22 **(California Business & Professions Code §§ 17200-17208)**

23 64. Representative Plaintiff incorporates in this claim for relief each and every
24 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
25 herein.

26 65. Representative Plaintiff further brings this claim for relief seeking equitable and
27 statutory relief to stop Defendant’s misconduct, as complained of herein, and to seek restitution
28 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business
practices described herein.

66. Defendant’s knowing conduct, as alleged herein, constitutes an unlawful and/or
fraudulent business practice, as set forth in California Business & Professions Code §§17200-

1 17208. Specifically, Defendant conducted business activities while failing to comply with the
2 legal mandates cited herein.

3 67. Defendant has clearly established a policy of accepting a certain amount of
4 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
5 Members herein alleged, as incidental to its business operations, rather than accept the
6 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
7 borne by its responsible competitors and as set forth in legislation and the judicial record.

8
9 **SIXTH CAUSE OF ACTION**
10 **PRIVATE ATTORNEYS GENERAL ACT CLAIMS**
11 **(California Labor Code §§ 2699)**

12 68. Plaintiff incorporates in this cause of action each and every allegation of the
13 preceding paragraphs, with the same force and effect as though fully set forth herein.

14 69. California Labor Code § 2699(a) states:

15 Notwithstanding any other provision of the law, any provision of this code
16 that provides for a civil penalty to be assessed and collected by the Labor
17 and Workforce Development Agency or any of its departments,
18 divisions, commissions, boards, agencies, or employees, for a violation of
19 this code, may, as an alternative, be recovered through a civil action
20 brought by an aggrieved employee on behalf of herself or herself and other
21 current or former employees...

22 70. Plaintiff (and each and every other Class Member) is an “aggrieved employee,” as
23 defined by California Labor Code § 2699(c), because he was employed by Defendant and was
24 one of many employees against whom violations of law were committed.

25 71. Plaintiff has met and/or will meet all of the requirements set forth in California
26 Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of
27 (and/or recovery under) California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512,
28 1174, 1194, 1194.2, 1197, and/or 1198.

72. Plaintiff brings this action on behalf of himself and all Class Members alleging
violations of the California Labor Code sections cited in the preceding paragraph.

73. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
herein, Plaintiff and Class Members have sustained damages, including loss of earnings, in an
amount to be established at trial.

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74. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Plaintiff and Class Members are entitled to recover various penalties as provided by California Labor Code § 2699 in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

RELIEF SOUGHT

1. **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

2. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed Class and/or any other appropriate subclasses under Rule 23 of the Federal Rules of Civil Procedure;

3. That the Court declare, adjudge and decree that Defendant violated the overtime provisions of the California Labor Code and the applicable California Industrial Welfare Commission Wage Order as to the Representative Plaintiff and Class Members;

4. That the Court declare, adjudge, and decree that Defendant willfully violated its legal duties to pay overtime under the California Labor Code and the applicable California Industrial Welfare Commission Wage Orders;

5. That the Court make an award to the Representative Plaintiff and the Class Members of one hour of pay at each employee’s regular rate of compensation for each workday that a meal period was not provided;

6. That the Court make an award to the Representative Plaintiff and the Class Members of one hour of pay at each employee’s regular rate of compensation for each workday that a rest period was not provided;

7. That the Court declare, adjudge, and decree that the Representative Plaintiff and Class Members were, at all times relevant hereto, and are still, entitled to be paid overtime for work beyond 8 hours in a day and 40 in a week;

1 8. That the Court make an award to the Representative Plaintiff and Class Members
2 of damages and/or restitution for the amount of unpaid overtime compensation, including interest
3 thereon, and penalties in an amount to be proven at trial;

4 9. That the Court order Defendant to pay restitution to the Representative Plaintiff
5 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
6 and Professions Code §§17200-17208;

7 10. That the Court further enjoin Defendant, ordering it to cease and desist from
8 unlawful activities in violation of California Business and Professions Code §17200, *et seq.*

9 11. For all other Orders, findings and determinations identified and sought in this
10 Complaint;

11 12. For interest on the amount of any and all economic losses, at the prevailing legal
12 rate;

13 13. For reasonable attorneys' fees, pursuant to California Labor Code §1194 and/or
14 California Code of Civil Procedure §1021.5; and;

15 14. For costs of suit and any and all such other relief as the Court deems just and
16 proper.

17
18 Dated: December , 2011

19 **SCOTT COLE & ASSOCIATES, APC**

20
21 By: /s/ Hannah R. Salassi, Esq.
22 Hannah R. Salassi, Esq.
23 Attorneys for Representative Plaintiffs and
24 the Plaintiff Class
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JURY DEMAND

Plaintiffs and the Plaintiff Class hereby demand trial by jury of all issues triable as of right by jury.

Dated: December , 2011

SCOTT COLE & ASSOCIATES, APC

By: /s/ Hannah R. Salassi, Esq.
Hannah R. Salassi, Esq.
Attorneys for Representative Plaintiffs and
the Plaintiff Class