

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 FAINE DAVIS, individually and on
5 behalf of all others similarly
6 situated,

7 Plaintiff,

8 v.

9 NORDSTROM, INC.,

10 Defendant.
11

No. C 11-3956 CW

ORDER DIRECTING
PLAINTIFF TO FILE
AN AMENDED
SUR-REPLY AND
MODIFYING FURTHER
BRIEFING SCHEDULE
FOR DEFENDANT'S
MOTION TO COMPEL
ARBITRATION

12 On December 22, 2011, the Court granted Plaintiff Faine
13 Davis's motion to file a sur-reply in connection with Defendant
14 Nordstrom, Inc.'s motion to compel arbitration during the hearing
15 held on that day and set forth a supplemental briefing schedule.
16 As required by the briefing schedule, Plaintiff filed her
17 sur-reply on January 5, 2011. After reviewing Plaintiff's filing,
18 the Court modifies the supplemental briefing schedule and directs
19 Plaintiff to file an amended sur-reply, in which she addresses the
20 matters specified below.

21 Defendant shall file properly authenticated copies of the
22 June 2011 dispute resolution policy and the corresponding policy
23 that was in effect in December 2010 when Plaintiff originally
24 filed a lawsuit against Defendant, including any attachments
25 thereto, and declarations regarding verbal advisements. Defendant
26 shall file these documents by Thursday, January 12, 2012.

27 Plaintiff shall file a amended sur-reply of fifteen pages or
28 less by Thursday, January 19, 2012. Defendant may file an

1 response to Plaintiff's amended sur-reply of fifteen pages or less
2 by Thursday, January 26, 2012. Plaintiff may file a reply to
3 Defendant's response of seven pages or less by Thursday, February
4 2, 2012. In their supplemental briefs, the parties shall address
5 the validity and unconscionability of the retroactive application
6 of the arbitration agreement to Plaintiff's already pending case
7 against Defendant, and may include other arguments not previously
8 briefed.

9 The Court directs the parties' attention to several cases,
10 statutes and items in the record and asks the parties to consider
11 them in preparing their supplemental briefing:

12 (1) The 2009 dispute resolution policy Plaintiff submitted
13 in connection with her motion for leave to file a sur-reply states
14 in part, "Nordstrom will provide 30 days written notice of
15 substantive changes. This notice is to allow employees time to
16 consider the changes and whether or not to continue employment
17 subject to the changes," Davis Decl., Ex. B, at 55. The August
18 2011 iteration of this policy provided by Defendant does not
19 appear to include this language. Doctor Decl., Ex. A.

20 (2) Title 9, section 2 of the United States Code states in
21 part that "an agreement in writing to submit to arbitration an
22 existing controversy arising out of such a contract . . . shall be
23 valid, irrevocable, and enforceable, save upon such grounds as
24 exist at law or in equity for the revocation of any contract").

25 (3) Long v. Fidelity Water Systems, Inc., 2000 U.S. Dist.
26 LEXIS 7827 (N.D. Cal.) (Whyte, J.) (addressing the application of
27 an arbitration clause added after litigation commenced).

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(4) Laster v. T-Mobile USA, Inc., 2008 U.S. Dist. LEXIS 103712, at *17-20 (S.D. Cal.), rev'd on other grounds, 131 S. Ct. 1740 (considering the enforceability of revisions to arbitration provisions made after litigation has begun).

IT IS SO ORDERED.

Dated: 1/6/2012



CLAUDIA WILKEN
United States District Judge