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12 And the Proposed Plaintiff Class

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

17 JESSIKA TSENG, individually and on behalf
18 of all others similarly situated,

19 Plaintiff,

20 vs.

22 NORDSTROM, INC., and Does 1 through 50,
23 inclusive

24 Defendants

Case No.: 11-08471 CAS (MRWx)

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT: LABOR CODE §2698, ET SEQ.**

JURY TRIAL DEMANDED

27 Plaintiff Jessika Tseng (“Plaintiff”), as an “aggrieved employee” under California Labor
28 Code §2699, alleges as follows on behalf of herself and all others similarly situated:

1 **I. INTRODUCTION**

2 1. This is a class action for the recovery of penalties under California Labor Code Private
3 Attorneys General Act of 2004 (“PAGA”), California Labor Code §2698, *et seq.* PAGA permits
4 an “aggrieved employee” to bring a lawsuit on behalf of herself and other current and former
5 employees to address an employer’s widespread violation of California Labor Code. In this case,
6 defendant Nordstrom, Inc. (“Nordstrom”), violated California Labor Code § 1198 and Wage Order
7 7-2001, § 14, by failing to provide suitable seats to Plaintiff and other current and former
8 employees of Nordstrom as provided herein.

9 2. Plaintiff Jessika Tseng is an individual residing in the State of California.

10 3. Defendant Nordstrom is a Washington corporation doing business in California.

11 4. Defendants Doe 1 through Doe 50, inclusive, are sued herein under fictitious names.
12 Their true names and capacities are unknown to Plaintiff. When their true names and capacities
13 are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities
14 herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
15 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
16 damages as herein alleged were proximately caused by those defendants. Each reference in this
17 complaint to “defendant,” “defendants,” or a specifically named defendant refers also to all
18 defendants sued under fictitious names.
19

20 5. Venue is proper in this judicial district because at least some of the alleged wrongdoing
21 occurred in this judicial district. In addition, Nordstrom conducts substantial business in this
22 judicial district.

23 6. At all relevant times, Plaintiff was employed as a cosmetic counter employee at
24 Nordstrom. In connection with her job as an employee working at Nordstrom, Plaintiff regularly
25 worked behind the cosmetic counter performing duties such as selling cosmetic products and
26 operating the cash register. Plaintiff worked at Nordstrom locations in California from August
27 2008 through May 31, 2011. She worked at locations in Arcadia, Newport Beach, and Costa
28 Mesa, California.

1 7. Wage Order 7-2011, which covers businesses in the “mercantile industry” such as
2 Nordstrom, provides: “All working employees shall be provided with suitable seats when the
3 nature of the work reasonably permits the use of seats.” *Id.*, section, 14(a). Nordstrom failed to
4 provide its cosmetic counter employees throughout the state of California, including Plaintiff, with
5 seats—despite the fact that the nature of work at the cosmetic counter reasonably permits the use
6 of seats.

7 **II. CLASS ACTION ALLEGATIONS**

8 8. Plaintiff brings the claim alleged herein under California law as class action claims
9 and seeks to have such claims certified pursuant to Rule 23 of the Federal Rules of Civil
10 Procedure on behalf of the following proposed class:

11 All persons who have been employed by Nordstrom as Cosmetic Counter Employees in
12 the state of California from September 9, 2010 to the final judgment in this action.

13 9. The class claims herein have been brought—and may properly be maintained—as a
14 class action under Rule 23 of the Federal Rules of Civil Procedure because (1) the class is so
15 numerous that joinder of all class members is impracticable; (2) there are questions of law and or
16 fact common to the class; (3) the claims of the proposed class representative are typical of the
17 claims of the class; and (4) the proposed class representative and her counsel will fairly and
18 adequately protect the interests of the class. In addition, the questions of law or fact that are
19 common to the class predominate over any questions affecting only individual class members and
20 a class action is superior to other available means for fairly and efficiently adjudicating the
21 controversy.
22

23 10. Ascertainability and Numerosity: The potential Class Members as defined herein are so
24 numerous that joinder would be impracticable. Defendant has employed hundreds of Cosmetic
25 Counter Employees during the Class Period. The names and addresses of the Class Members are
26 available to the Defendant. Notice can be provided to the Class Members via first class mail using
27 techniques and a form of notice similar to those customarily used in class action lawsuits of this
28 nature.

1 11. Commonality and Predominance of Common Questions: There are questions of law
2 and fact common to Plaintiff and the Class Members that predominate over any questions
3 affecting only individual members of the Class. These common questions of law and fact include,
4 but are not limited to:

- 5 a. Whether Defendant has a policy and practice of providing Cosmetic Counter
6 Employees with suitable seats;
- 7 b. Whether Defendant violated Wage Order 7-2011 by failing to provide Cosmetic
8 Counter Employees with suitable seats when the nature of their work reasonably
9 permitted the use of seats;
- 10 c. The proper measure of damages and penalties owed to Plaintiff and Class Members.

11 12. Typicality: Plaintiff's claims are typical of the claims of the other Class Members.
12 Defendant's common course of unlawful conduct has caused Plaintiff and Class Members to
13 sustain the same or similar injuries and damages caused by the same common policies, practices,
14 and decisions of Defendant. Plaintiff's claims are thereby representative of and co-extensive with
15 the claims of the other Class Members.
16

17 13. Adequacy of Representation: Plaintiff is a member of the Rule 23 Class defined
18 herein, does not have any conflicts of interest with other Class Members, and will prosecute the
19 case vigorously on behalf of the class. Plaintiff will fairly and adequately represent and protect
20 the interests of the Class Members. Plaintiff has retained attorneys who are competent and
21 experienced in litigating large employment class actions, including large wage and hour class
22 actions.
23

24 **FIRST CAUSE OF ACTION**
25 **(Labor Code Private Attorneys General Act – Labor Code §2698, et seq.)**
26 **(On behalf of Plaintiff and all Proposed Class Members)**

27 14. Plaintiff realleges and incorporates the other paragraphs of this complaint as if fully set
28 forth herein.

15. California Labor Code §1198 makes it illegal to employ an employee under conditions

1 of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the
2 other current and former cosmetic counter employees with suitable seats in violation of Wage
3 Order 7-2001, § 14, Nordstrom violated California Labor Code § 1198.

4 16. PAGA permits an “aggrieved employee” to recover penalties on behalf of herself and
5 other current or former employees as a result of the employer’s violation of certain sections of
6 California Labor Code. Plaintiff qualifies an aggrieved employee as defined in Labor Code §
7 2699(a), in that Plaintiff was employed by Nordstrom and was not provided with a seat, in
8 violation of Lab. Code § 1198 and Wage Order 7-2001, § 14. She was harmed by Nordstrom’s
9 failure to provide seats because she was required to stand for extended periods of time despite the
10 fact that the nature of her work did not require that she remain standing at all times. A violation of
11 Lab. Code § 1198 gives rise to private right of action under PAGA. *See, Bright v. 99 Cents Only*
12 *Stores* (2010) 189 Cal.App.4th 1472.

13 17. Plaintiff has fully exhausted her administrative remedies for this cause of action. She
14 gave notice to both Nordstrom and the Labor & Workforce Development Agency of this violation
15 by certified mail on July 22, 2011. The Labor & Workforce Development Agency has not
16 provided plaintiff with notice that it intends to investigate this violation, although 33 calendar days
17 have elapsed since the postmark date of Plaintiff’s notice. Accordingly, Plaintiff is entitled to
18 commence this action under Labor Code § 2699(a).

19 18. Consequently, and pursuant to Labor Code § 2699(a) plaintiff seeks to recover civil
20 penalties for which Defendant is liable for the Labor Code violation as set forth in the foregoing.

21 19. Plaintiff also seeks attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

22
23 **PRAYER**

24 **WHEREFORE**, based on the foregoing, Plaintiff, individually and on behalf of all others
25 similarly situated, respectfully requests entry of judgment against Defendant as follows:

26 1. An Order declaring that this action is properly maintainable as a Class Action under
27 Federal Rules of Civil Procedure Rule 23, certifying the proposed Class herein and appointing
28 Plaintiff and the undersigned counsel of record to represent the Class;

- 1 2. For penalties pursuant to Labor Code § 2699 in a manner and amount authorized by
- 2 that statute, in an amount according to proof;
- 3 3. For attorneys’ fees and costs of suit pursuant to Labor Code § 2699(g)(1), or as
- 4 otherwise authorized by law;
- 5 4. For such other and further relief as this court may deem just and proper.

7 Dated: July 23, 2012 /S/

8 STEVEN M. TINDALL

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21 **JURY DEMAND**

22 Plaintiff hereby demands a jury trial on all issues.

25 Dated: July 23, 2012 /S/

26 STEVEN M. TINDALL
27 Attorney for Plaintiff

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