

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

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Attorneys for Plaintiff,
IVANIE MURPHY on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IVANIE MURPHY, an individual, on behalf of)
himself, all aggrieved employees, and the State)
of California as a Private Attorneys General,)

Case No.:

22STCV25014

Plaintiff,

vs.

REPRESENTATIVE ACTION

NORDSTROM, INC., a Washington
corporation, and DOES 1-50, inclusive,

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Defendant.

Plaintiff IVANIE MURPHY brings this PAGA representative action complaint on behalf
of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

1 **NATURE OF THE ACTION**

2 1. Plaintiff IVANIE MURPHY worked as an employee for defendant NORDSTROM,
3 INC. and Does 1-50 (collectively "Defendant"). Defendant is a corporation which owns and
4 operates retail shopping locations throughout California. Plaintiff brings this action pursuant to the
5 Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a
6 representative basis. All current and former employees of Defendant within one year of serving
7 notice on the LWDA to the present are aggrieved employees.

8 2. Defendants failed to comply with California Labor Code requirements due to erroneous,
9 willful and intentional employment practices and policies. Plaintiff brings this representative
10 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
11 California, based upon the claims articulated below. Plaintiff provided notice of his claims
12 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA") as
13 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
14 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
15 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
16 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.*

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
18 worked, including overtime hours worked; (2) failing to include nondiscretionary bonuses in
19 regular rate of pay to calculate overtime and penalty pay; (3) failing to properly calculate and pay
20 sick leave wages; (4) failing to pay wages due upon termination; (5) failing to provide rest breaks;
21 (6) failing to provide uninterrupted meal breaks and second meal breaks; (7) failure to provide
22 suitable seating and; (8) failing to provide accurate wage statements and maintain accurate payroll
23 records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including
24 the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, as described more fully
25 herein.

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1 **THE PARTIES**

2 7. Plaintiff IVANIE MURPHY is a resident of the State of California and was employed
3 as an hourly, nonexempt employee of Defendants until April of 2022.

4 8. Defendant NORDSTROM, INC. is a Washington corporation authorized to do business
5 and doing business in California with the capacity to sue and to be sued, and doing business, in the
6 county of Los Angeles, State of California.

7 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
9 informed and believes and thereon alleges that said Defendants are legally responsible for the
10 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
11 Plaintiff will amend this complaint when their true names and capabilities are ascertained.

12 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
13 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
14 of the representative class, and exercised control over their wages, hours, and working conditions.
15 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
16 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
17 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
18 to the other Defendants.

19 **JURISDICTION AND VENUE**

20 11. Venue is proper in this judicial district because Defendants conduct business in this
21 county and each defendant has legal obligations to Plaintiff and many of the aggrieved employees
22 in this case that arose in this county.

23 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
24 the Superior Court and will be established according to proof at trial. Based on information,
25 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
26 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
27 (\$25,000).
28

1 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendants are qualified to do business in California and regularly
3 conduct business in California. Further, there is no federal question at issue as the claims herein
4 are based solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 14. During the relevant time-period, Defendants committed various violations of the
7 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 15. This representative action represents over one hundred current and former aggrieved
10 employees.

11 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 17. Plaintiff and all current and former employees within one year of filing this action to
15 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
16 code §2699(c).)

17 18. Defendants, and each of them, have committed the following violations of the
18 California Labor Code:

19 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

20 (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197,
21 1197.1, 1198, 2698 *et seq.*, Wage Order 7)

22 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 20. Wage Order 7 defines “hours worked” as “the time during which an employee is subject
25 to the control of an including all the time the employee is suffered or permitted to work, whether
26 or not required to do so.” Defendant has been engaged in many unlawful employment practices
27 which resulted in underpayment for hours worked each pay period as more fully described below.
28

1 21. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees were required to
2 undergo off the clock COVID screenings and were thus routinely subjected to periods wherein
3 they were under the Defendants' control but not compensated for their time.

4 22. Work Performed During Unpaid Meal Periods. As more fully set forth below,
5 Defendant failed to permit Plaintiff and others to take timely, off-duty meal breaks of "not less
6 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and
7 512. Plaintiff and aggrieved employees were frequently not given their meal break within the
8 statutory time period required and breaks were interrupted with work duties resulting in underpaid
9 hours worked. Aggrieved employees working as security guards and others were also required to
10 keep their walkie talkies on and with them at all times, even while clocked out for lunch. Defendant
11 also failed to pay meal period penalty wages at the regular rate of pay.

12 23. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and
13 aggrieved employees for all hours worked as a result of Defendant's practices described above.
14 Based on Defendant's unlawful conduct described above, and because Plaintiff and the aggrieved
15 employees were paid at or near minimum wage, Defendant's failure to pay for all hours worked,
16 including overtime, resulted in a payment of less than the minimum wage for all hours worked in
17 violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Defendant is liable for civil
18 penalties pursuant to Labor Code §§558 and 2699 *et seq.*

19 24. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
20 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
21 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
22 unlawful employment policies and practices discussed herein. As a result of these practices,
23 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
24 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
25 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
26 by law.
27
28

1 **Failure to Include Nondiscretionary Bonuses in Regular**

2 **Rate of Pay to Calculate Overtime and Penalty Pay**

3 (Cal. Lab. Code §§§§200, 206, 207, 210, 216, 218, 218.5, 223, 510, 558, 1194,
4 1197, 1197.1, 1198, and 2698 *et seq.*)

5 25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 26. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
8 employees of every description, whether the amount is fixed or ascertained by the standard of time,
9 task, piece, commission basis, or other method of calculation.”

10 27. Defendant has a policy and practice of paying shift differential pay and issuing
11 nondiscretionary bonuses yet failing to include all such payments when calculating the regular rate
12 of pay for purposes of calculating overtime, sick pay, and meal and rest period penalty wages due.
13 It is well established that non-discretionary commissions, piece rate pay, and bonuses retroactively
14 increase the employee’s “regular rate” of pay. (Labor Code §207) The “regular rate” is calculated
15 by dividing the hours worked in a week by all the compensation earned for that week. When an
16 employee is later paid a bonus that is partly due to work performed in that week, this additional
17 pay must be added into the total compensation for the week, increasing the employee’s regular rate
18 of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

19 28. Defendant did not make any adjustments to overtime rates to incorporate all shift
20 differential and bonus pay earned, and this failure is reflected in aggrieved employees’ paystubs.
21 Plaintiff and other employees have been denied “the unpaid balance of the full amount of this...
22 overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Defendant has
23 violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
24 Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation
25 of the labor code to fail to comply with a wage order. Defendant is liable for civil penalties pursuant
26 to Cal. Labor Code §558 and 2698 *et seq.*

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1 **Failure to Properly Calculate and Pay Sick Leave Wages**

2 (Cal. Labor Code §246)

3 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 30. Employers must calculate paid sick leave for non-exempt employees in one of two
6 ways:

- 7 a. Paid sick time for nonexempt employees shall be calculated in the same manner
8 as the regular rate of pay for the workweek in which the employee uses paid sick
9 time, whether or not the employee actually works overtime in that workweek; [or]
10 b. Paid sick time for nonexempt employees shall be calculated by dividing the
11 employee's total wages, not including overtime premium pay, by the employee's
12 total hours worked in the full pay periods of the prior 90 days of employment.

13 Labor Code § 246 (l)

14 31. Plaintiff and aggrieved employees were paid sick leave wages at their base hourly rates
15 of pay, which is less than required under either of the two alternative methods of calculation
16 provided by Labor Code section 246(l).

17 32. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.
18 Labor Code §246.

19 **Failure to Pay Wages Due Upon Termination**

20 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

21 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 34. An employee who is discharged must be paid all of his or her wages, including penalty
24 wages, and underpaid regular and overtime wages, immediately at the time of termination. (Labor
25 Code Sections 201 and 227.3.) As set forth above, Defendant knowingly and willfully failed to
26 pay all compensation due and owing to Plaintiff at the time employment terminated. Defendant
27 willfully failed to pay employees who are no longer employed by it all compensation due upon
28 termination of employment as required by Cal. Lab. Code §§201 and 202.

35. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

37. Defendant has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Plaintiff reports receiving late and shortened rest breaks, and this experience was shared by other Aggrieved Employees. Further, when working as a security guard Plaintiff was required to keep his walkie talkie on and respond at all times, resulting in noncompliant breaks as Plaintiff and others were not relieved from all duties.

38. Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

39. Defendant did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 7. When breaks were missed Defendant failed to pay the 1-hour penalty, as required, at the properly calculated regular rate of pay. Because Defendant violated the Wage Order, Defendant is liable under Labor Code

§1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

41. During Plaintiff's employment, Defendant failed to maintain a compliant meal period policy and practice. Defendant failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

42. Plaintiff and aggrieved employees frequently received late or shortened meal periods. Additionally, security guards and others with walkie talkies were required to keep them on an operational during meal breaks, thus remaining under Defendant's control. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff and aggrieved employees

1 were not paid a premium payment, paid as an hour's wage when meal periods were not given to
2 them in compliance with California law.

3 43. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
4 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
5 §§226.7 and 512. Moreover, because Defendant's policy violates a Wage Order, Defendant is
6 liable under Labor Code §1198. As a derivative claim, Plaintiff alleges that pay statements were
7 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
8 Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to
9 Cal. Labor Code §558 and §2698 *et. seq.*

10 **Failure to Provide Suitable Seating**

11 (Lab. Code section 1198)

12 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 45. Labor Code section 1198 states, in pertinent part, "The employment of any employee...
15 under conditions of labor prohibited by the [Wage Order] is unlawful."

16 46. Section 14 of Wage Order 7 provides that:

17 (A) All working employees shall be provided with suitable seats when the nature of the
18 work reasonably permits the use of seats.

19 (B) When employees are not engaged in the active duties of their employment and the
20 nature of the work requires standing, an adequate number of suitable seats shall be
21 placed in reasonable proximity to the work area and employees shall be permitted to
22 use such seats when it does not interfere with the performance of their duties.

23 47. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
24 with suitable seating during their employment as required by section 14 of the applicable Wage
25 Order. Plaintiff and other aggrieved employees were not provided with adequate seating when they
26 were working in positions, such as the cash register, where all required tasks can reasonably and
27 successfully be accomplished while seated.
28

1 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
2 **Requirements**

3 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

4 48. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 49. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
7 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
8 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
9 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
10 actual gross wages earned, including pay for all hours worked, and overtime.

11 50. Such failures caused injury to Plaintiff and others, by, among other things, impeding
12 them from knowing the total hours worked and the amount of wages to which they are and were
13 entitled. Defendant knowingly and intentionally failed to itemize the gross wages earned, net
14 wages earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor
15 Code § 2698 *et seq.*

16 51. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
17 employees to sign employment related contracts and documents that contained unlawful terms of
18 employment.

19 **FIRST CAUSE OF ACTION**

20 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**

21 **(California Labor Code §2698 *et seq.*)**

22 52. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 53. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants
25 during the applicable statutory period and suffered one or more of the Labor Code violations set
26 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
27 former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable
28 attorneys’ fees and costs.

1 54. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

4 55. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
5 Code provisions:

- 6 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
7 Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194,
8 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 7);
- 9 b. Failure to Include Nondiscretionary Bonuses in Regular Rate of Pay to Calculate
10 Overtime and Penalty Pay (Cal. Labor Code §§200, 206, 207, 210, 216, 218, 218.5,
11 223, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*));
- 12 c. Failure to Pay Properly Calculate and Pay Sick Wages (Cal. Labor Code §246);
- 13 d. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
14 and 2698 *et seq.*);
- 15 e. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
16 2698 *et seq.*);
- 17 f. Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks (Cal. Labor
18 Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*);
- 19 g. Failure to Provide Suitable Seating (Lab. Code section 1198 and Wage Order 7
20 Section 14);
- 21 h. Failure to Provide Accurate Itemized Wage Statements and Violation of Record
22 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

23 56. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
24 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
25 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
26 employee for each subsequent violation of Labor Code §226(a).

27 57. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
28 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations

1 for each underpaid employee for each pay period for which the employee was underpaid, and one
2 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
3 for which the employee was underpaid.

4 58. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
5 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
6 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
7 a civil penalty is not specifically provided.

8 59. Plaintiff and the other current and former employees of Defendants are aggrieved
9 employees. They were or are employed by Defendants, and each of them, and the violations alleged
10 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
11 current and former aggrieved employees.

12 60. At the time of each violation, Defendants employed one or more employees.

13 61. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
14 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
15 determined at trial, pre-judgment interest, costs and attorneys' fees.

16 62. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
17 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
18 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
19 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
20 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice within
21 the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to
22 Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of
23 aggrieved employees and the State of California.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
26 judgement against Defendants as follows:

27 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
28 determined at trial, but at least the jurisdictional amount of this Court;

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: August 3, 2022

**KOUL LAW FIRM
MAJARIAN LAW GROUP, APC**



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff IVANIE MURPHY, and all
aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

May 31, 2022

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Nordstrom, Inc.
1617 Sixth Avenue
Seattle, Washington 98101

CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Ivanie Murphy
Employer: Nordstrom, Inc.

Dear Sir or Madam:

Claimant Ivanie Murphy has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Garen Majarian of the Majarian Law Group to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, Nordstrom, Inc. (hereafter “Employer”).

Employer is a corporation which owns and operates retail shopping locations throughout California. Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as an hourly, non-exempt employee until April 2022.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 7)

Wage Order 7 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as more fully described below.

Off-the-Clock Hours Worked

Claimant and aggrieved employees were required to undergo off the clock COVID screenings and were thus routinely subjected to periods wherein they were under the Employers’ control but not compensated for their time.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees were frequently not given their meal break within the statutory time period required and breaks were interrupted with work duties resulting in underpaid hours worked. Aggrieved employees working as security guards and others were also required to keep their walkie talkies on and with them at all times, even while clocked out for lunch. Employer also failed to pay meal period penalty wages at the regular rate of pay.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Include Nondiscretionary Bonuses in Regular

Rate of Pay to Calculate Overtime and Penalty Pay

(Cal. Labor Code §§200, 206, 207, 210, 216, 218, 218.5, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Section 2(G) of Wage Order 7 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer has a policy and practice of paying shift differential pay and issuing nondiscretionary bonuses yet failing to include all such payments when calculating the regular rate of pay for purposes of calculating overtime, sick pay, and meal and rest period penalty wages due. It is well established that non-discretionary commissions, piece rate pay, and bonuses retroactively increase the employee’s “regular rate” of pay. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime rates to incorporate all shift differential and bonus pay earned, and this failure is reflected in aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages

(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including penalty wages, and underpaid regular and overtime wages, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports receiving late and shortened rest breaks, and this experience was shared by other Aggrieved Employees. Further, when working as a security guard Claimant was required to keep his walkie talkie on and respond at all times, resulting in noncompliant breaks as Claimant and others were not relieved from all duties.

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 7. When breaks were missed Employer failed to pay the 1-hour penalty, as required, at the properly calculated regular rate of pay. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As

a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees frequently received late or shortened meal periods. Additionally, security guards and others with walkie talkies were required to keep them on an operational during meal breaks, thus remaining under Employer's control. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 5 Section 14)

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 14 of Wage Order 7 provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with adequate seating when they were working in positions, such as the cash register, where all required tasks can reasonably and successfully be accomplished while seated.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime.

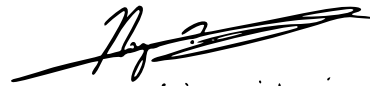
Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,



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