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15 Attorney for Plaintiffs MAUREEN KEATING,
16 CHRISTINA FREITAG, and NANCY M. RHEESTON,
17 Individually and on behalf of all others similarly situated

18 UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ALASKA

20 MAUREEN KEATING, CHRISTINA FREITAG, and
21 NANCY M. RHEESTON, on their own behalves and on
22 behalf of all others similarly situated,

23 Plaintiffs,

24 -vs-

25 NORDSTROM, INC., a Washington Corporation,

26 Defendant.

Case No. 3:17-cv-00030 SLG

**[PROPOSED] SECOND
AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

JURY DEMAND

27 **GENERAL ALLEGATIONS**

1. Plaintiff MAUREEN KEATING is a resident of the State of Alaska, and a customer of NORDSTROM, INC. Keating was formerly a resident of California until on or around November 2014, during which time she regularly shopped at Nordstrom. During all respective class periods on all causes of action, Keating has regularly shopped in Nordstrom brick

1 and mortar stores, including as a resident of and visitor to Alaska and California, and also made
2 online purchases. Keating is suing both in her individual capacity and on behalf of all others
3 similarly situated.

4 2. Plaintiff CHRISTINA FREITAG was at all pertinent times a resident of the State
5 of Alaska, a customer of NORDSTROM, INC., and is suing both in her individual capacity and
6 on behalf of all others similarly situated.

7 3. Plaintiff NANCY RHEESTON was at all pertinent times a resident of the State of
8 California, a customer of NORDSTROM, INC., and is suing both in her individual capacity and
9 on behalf of all others similarly situated.

10 4. Defendant NORDSTROM, INC. is a corporation duly organized and existing
11 under the laws of the State of Washington, with its principal place of business at 1700 Sixth
12 Avenue, Suite 1000, Seattle, WA, 98101.

13 5. Plaintiffs Keating, Freitag and Rheeston allege that Nordstrom has a pattern
14 and practice of advertising prices that are misleading and/or deceptive while negligently
15 charging its customers more than the ticketed or otherwise marked sale price, as more
16 fully described hereinbelow.

17 6. During the class periods, each of the Plaintiffs entered Nordstrom stores in Alaska
18 and/or in California (and in Keating's case also shopped online relying on Nordstrom's promises
19 including the affixed prices, floor sets, in-store catalogues and other advertising such as internet
20 banner ads, emails and blogs, and purchased goods which they otherwise would not have and/or
21 for which they paid a higher price than they otherwise would have. Each of the Plaintiffs was
22 deceived generally as set forth hereinabove, and particularly as more fully set forth below.

23 7. Plaintiffs further allege that Nordstrom's makes claims that are false and/or
24 deceptive and/or likely to cause confusion to reasonable customers including Plaintiffs, including
25 but not limited to its claims that it is committed to delivering low prices to its customers,
26 that it will not be undersold and that it price(s) match with other retailers. Plaintiffs
27 further contend that Nordstrom's practices reasonably cause customers, including

1 Plaintiff's, to believe that Nordstrom is researching prices and that the customers do not
2 need to. Although Nordstrom has changed the language of its price matching statement on
3 its website since the filing of this lawsuit, Plaintiffs allege it continues to be misleading
4 because a reasonable consumer could be deceived into understanding that the new
5 language - "some items are price matched" in conjunction with Nordstrom's continued use
6 of the language "We've found this item at a lower price at a similar retailer - We've
7 gladly matched it! We're committed to bringing you the best prices, every day" - means
8 that if some items are on sale at lower prices elsewhere, Nordstrom is on top of monitoring
9 across the grid. When in point of fact, Plaintiffs allege, Nordstrom only occasionally price
10 matches isolated ("some") items, such that Nordstrom's price matching is or may deceive,
11 mislead and/or cause confusion and that it is truer to state Nordstrom's *sometimes, may but*
12 *does not always* and/or *occasionally* price matches. Thus, Plaintiffs allege Nordstrom's
13 advertising may deceive and/or mislead and/o confuse customers and is employed to
14 induce false confidence and/or reliance by customers and encourage them to rely on
15 Nordstrom's claims and/or representations to their detriment. As a result, reasonable
16 consumers, relying on Nordstrom's commitment to bringing the best possible prices, have
17 in fact paid more for their purchases than they otherwise would have had they done their
18 own research because Nordstrom does not consistently/always do the research, does not
19 price match across its customer base even when it has knowledge of lower prices and
20 affords an individual customer a price match, and is not committed to bringing the best
21 possible prices, every day.

22 8. On 2/12/2015 Keating purchased a Je T'aime knit top in the Anchorage store
23 which is clearly labeled with an affixed printed label with the price \$88.00. Upon examining her
24 receipt, she was charged \$98.00. Keating was told that she could not have an adjustment despite
25 the clear error on Nordstrom's part. On a return trip to the store on 2/16/2015, Keating found that
26 all of the other similar knit tops had had the printed price torn off, and a \$98.00 price handwritten
27 thereon. Keating who had found the same item available online for \$78.00 asked an assistant about

1 the price differences and how the price guarantee worked, Keating was told she could not have a
2 price adjustment. (Exhibit 1.) Keating did not receive a refund of \$10.00 for this purchase until
3 July 2017, after this lawsuit was filed.

4 9. On 3/30/2015, because Keating was informed that Nordstrom only price matches
5 before an item is purchased or used, Keating was forced to return to Nordstrom to “exchange” two
6 tops by returning and repurchasing them from Nordstrom in order to receive a price match.
7 (Exhibit 2.) Prior to February 2015, when Keating was refused a price match by Nordstrom to the
8 price actually printed on the tag of her overcharged purchase that day, Keating had not known that
9 she could not rely on Nordstrom’s commitment to provide her the best prices, and had previously
10 purchased several other Lucky brand tops and other brand name items sold by other retailers at
11 Nordstrom’s full price. Nordstrom’s commitment to price matching, however, did not extend to
12 any other customers who continued to be offered the higher prices for these very items despite
13 Nordstrom’s knowledge. Nordstrom has recently changed its price matching statement from
14 “We’re Price Matching. We’ve found this item at a lower price at a similar retailer – and
15 we’ve gladly matched it!” to “Some items are price matched.” (Exhibits 3 and 4.)
16 Keating alleges that Nordstrom’s price matching representations were likely to and/or did
17 deceive its customers, including Plaintiffs, during the two, three and four-year class
18 periods prior to the filing of this action, and continues to do so. Accordingly, Nordstrom
19 should be enjoined from advertising that it price matches unless and until it prominently discloses
20 to its consumers the limits of its price matching practices on the same page as it displays its
21 purported price matching and not through a hyperlink buried in a chain of well-hidden disclosures
22 or it could actually price match.

23 10. Plaintiffs also allege that Nordstrom regularly advertises pre-season sales in which
24 it purports to discount the prices of fashion and other items, which it buys in limited quantities.
25 Plaintiffs further allege Nordstrom does not offer such goods for sale at the purported full, regular
26 price, and/or nor does it sell such items in any substantial quantities at the purported full value,
27 but rather that any actual sales of the remaining preseason sale merchandise at the purported

1 original or regular price are isolated and insignificant. Plaintiffs allege that reasonable consumers
2 fall into two groups, and both are subject to damage through this deception. One group, as
3 reflected by Freitag and Rheeston understood the sale tags to reflect that the goods had previously
4 been offered and sold at the higher price on the tag. The second group of Nordstrom shoppers, as
5 reflected by Keating, are a group who were aware that the pre-season merchandise was new to the
6 store, was not previously offered, but reasonably believed that Nordstrom intended to and would
7 continue to stock the items in sufficient quantities so as to sell substantial numbers of the new
8 arrivals at the full reference price such that they believed they were therefore receiving a savings
9 by purchasing the items before they were permanently marked up. On information and belief,
10 most of goods introduced at the pre-season sale are briefly fashionable items of limited
11 production, rather than closet staples. On information and belief, this group was deceived
12 because in fact Nordstrom intends the merchandise to sell out during the pre-season sale and
13 quickly and deeply discounts any unsold merchandise, such that the purported preseason sale
14 prices are in reality a full, or original price and the items are rarely if ever marketed and/or sold at
15 the ticketed full price. Nordstrom's claims may deceive, mislead and/or confuse by misstatement
16 or omission. Plaintiffs allege that the regular reference price is intended to deceive, mislead
17 and/or confuse and did deceive, mislead or confuse customers, including Plaintiffs, as to the value
18 of the items sold to them and the reason for, existence of and amount of savings afforded to them
19 on their purchases in such sales, and that the purported full value displayed is a fictitious
20 reference price, intended to create the perception of savings and encourage consumers to purchase
21 merchandise at what is in reality the prevailing full market price. (See Exhibit 5, Preseason sale
22 advertisement. "Last Chance to Save at Anniversary Prices – Hurry, Quantities are Limited."
23 Exhibit 6, email of July 21, 2016 from Nordstrom to Keating: "Your Shopping Bag Items Are
24 Hot! We Don't Want You to Miss Out." Keating regularly received similar entreaties while a
25 California resident.)

26 11. Plaintiffs further allege that Nordstrom's causes customers, including Plaintiffs, to
27 be deceived, misled and/or confused by its actions, including but not limited to a pattern and

1 practice of affixing hang tags with a serrated edge that is deceptive to customers, including
2 plaintiffs, because it is misleading as to both the inherent value of the goods and as to the
3 prevailing market price of the items. Plaintiffs allege that first the goods are offered with the
4 upper and lower parts of the serrated edge hang tags for the purpose of causing consumers to
5 believe that the anniversary sale prices represent a savings on the original price or regular and
6 value, even when no goods have been sold at that price because the merchandise is brand new and
7 offered for the first time. Thereafter, on such few goods as may remain unsold at the end of the
8 preseason sale, shortly thereafter the lower portion of the hang tag is removed and the items are
9 then offered for sale by Nordstrom by offering the goods at a discount from the upper, higher
10 reference price rather than the lower price at which the merchandise was offered and/or sold in
11 any significant quantities in the preseason sale, thus exaggerating the amount of savings offered at
12 the summer sale. For example, a Madewell brand striped leather tote bag was offered for sale to
13 Keating, and other consumers, during the anniversary sale, at which time it was featured in
14 Nordstrom's catalogue. Nordstrom advertised the handbag at a preseason sale price of \$129, and
15 represented to its customers that after the sale was ended it would be sold for \$199. (Exhibit 7.)
16 However, the handbag was offered for sale online and in the Anchorage Nordstrom on September
17 2nd, approximately three weeks after the anniversary sale at the price of \$99. However, the lower
18 portion of the tag showing the \$129 price was removed, and the savings was represented to be 50
19 percent. (Exhibit 8.) On information and belief, the item is now available at Nordstrom Rack
20 where it was first offered on sale at an alleged 50% off (from \$199) and at the same price of \$99.
21 The handbag is currently available for \$79.20. (Exhibit 9.) Thus, Plaintiffs contend that the
22 alleged regular price of \$199 was not a prevailing market price for 90 days or indeed any
23 reasonable period of time, and further that no substantial quantities were sold at the purported full
24 regular price. Plaintiffs further allege that the inflated regular price is used by Nordstrom to in
25 turn inflate the savings offered when the items truly are discounted, and that this pricing scheme
26 is likely to deceive and does deceive Plaintiffs and reasonable consumers into making purchases
27 because they believe they are getting a better deal than they are. Plaintiff alleges that this this

1 misleading and confusing advertising is systemic as to most, if not all, of the merchandise
2 Nordstrom presents as preseason sale items.

3 12. Nordstrom's practices, including but not limited to its practice of using the serrated
4 hang tags, violates the Federal Trade Commission guidelines because it misstates or omits
5 information that is material to a customer's decision to purchase a product. Plaintiffs contend that
6 Nordstrom's practices, including but not limited to the use of serrated hang tags, are designed to
7 misstate and/or omit information about the prevailing market price for the goods offered in the
8 summer sale by omitting the price at which these items were offered during the pre-season (by
9 removal of the lower part of the hang tag) and misstating the amount of the discount being offered
10 vis-à-vis the actual savings from the price at which substantial quantities were sold. Plaintiffs
11 allege that they are deceived in this scheme and that essentially the failure to accord a true savings
12 or the full of amount of the savings alleged is essentially an overcharge, and they are damaged in
13 the amount of the difference between the price they paid and the amount of money they thought
14 they were saving. Accordingly, Plaintiffs contend that Nordstrom should be enjoined from this
15 practice, so that its consumers in Alaska and California will not be similarly deceived in their
16 future purchases and may instead make informed decisions based on truthful statements as to
17 savings offered.

18 13. Plaintiffs allege that Nordstrom engages in other deceptive sales practices,
19 including misleading representations that prices are reduced by "more than" or "up to" certain
20 percentages, when the markdowns and/or prices charged do not reflect the prominently displayed
21 amounts advertised, and further allege that they were induced to shop because of such floor set
22 signage. Plaintiffs further allege that items regularly bought as multiple items such as hosiery and
23 towels are misleadingly advertised as to the amounts of savings offered when those items are on
24 sale.

25 14. Keating has regularly viewed advertisements, including door and window signs,
26 emails, Facebook banner ads, blogs and catalogues which induced her to shop at Nordstrom,
27 including the anniversary, half-yearly, pre-season and summer sales during the class period.

1 During this time, she bought dozens of items, including but not limited to scarves, household
2 goods including towels, socks, hosiery, shoes, boots, sandals, lingerie, clothing, makeup and
3 perfume, toys and other baby goods including clothing, footwear and accessories, including
4 specifically purchases from the Nordstrom preseason, summer and other sales. In addition to the
5 items more particularly described in paragraphs 8-9, and 14-19, Keating's purchases include but
6 are not limited to purchases at the 2013 preseason sale in California including towels; purchases
7 of towels in the 2014 Nordstrom "Home" brand towels and washcloths in California; purchase in
8 August 2014 at the preseason sale in California; purchases in the end of summer sale on or about
9 September 1, 2014 of t shirts and hosiery while visiting Anchorage; purchases of children's
10 clothing and shoes in the preseason sale on or about July 12, 2015 and August 6 and 7, 2015 in
11 Anchorage; purchases in the end of summer sale on or about September 13, 2015; an online
12 purchase of women's clothing during the anniversary sale on or about August 6, 2016; and a
13 purchase of a blanket wrap in the end of summer sale on or about September 10, 2017.¹

14 15. Keating discovered that she was overcharged in many of her transactions, and she
15 has been required to spend her time returning to Nordstrom stores to alert its employees to the
16 issue, and request refunds. Nevertheless, Keating found that the overcharging continued to occur.
17 Keating now finds that it is necessary for her to research each item she purchases at Nordstrom to
18 ensure that she gets the lowest advertised price because Nordstrom does not consistently ensure
19 that its point of sale database reflects either the marked sales tag, the floor signage or the prices
20 advertised on its website. Indeed, even after the filing of this lawsuit, Keating has found that
21 Nordstrom point of sale equipment still fails to reflect the marked or advertised price of her
22 purchases and that she must continue to be hypervigilant. For example, on November 13, 2017,
23 Keating purchased three items, two of which were on sale with reductions marked on the price
24

25 ¹ Although Keating does not have printed receipts for every item she has purchased over the
26 years, she does have some bank records and other data that reflect the prices and dates she
27 shopped the various sales. Further, in her reliance on Nordstrom's representations, she also
shopped with gift cards and cash. See Exhibit 10, Keating miscellaneous receipts and bank
records. Keating will need discovery. On Information and belief, Nordstrom maintains a
database that is searchable by credit card, customer ID, and various other information fields.

1 tags. However, one of them rang up at \$129, and had to be manually adjusted to the marked price
2 of \$76.80.² Accordingly she seeks permission to represent the absent class members who have
3 been charged prices higher than the advertised prices on any given day and to seek an injunction
4 precluding Nordstrom from offering for sale any merchandise unless and until it has adjusted the
5 price that will ring up at the register.

6 16. On 2/15/2017, Keating purchased a scarf from Nordstrom from a display of several
7 dozen such scarves marked at a 40 percent discount, with a handwritten price of \$23.40. The scarf
8 rang up at full-price of \$39.00. (Exhibit 12 hereto). This transaction constitutes a violation of
9 Alaska Consumer Protection laws as set forth at AS 45.50.471(b)(12) because Nordstrom
10 employed false promise with the intent that she rely upon the promised 40 percent savings to
11 induce her and others to purchase the item. Even though Keating was not in fact deceived
12 because she was by that date aware that Nordstrom regularly rings up prices higher than that
13 marked because she nevertheless Keating suffered actual damage in the overcharge itself.
14 Further, Alaska's consumer protection statute provides Keating has standing to seek restitution for
15 those similarly situated consumers and an injunction to protect a class of consumers who are at
16 continued risk from Nordstrom's violations of pricing laws.

17 17. On 2/16/2015 Keating was lured into Nordstrom Anchorage by email solicitations
18 and signs prominently posted on the entry that prices were 40 percent off. Keating, a visually
19 impaired consumer, was dismayed to find that prices were not all 40% reduced, but as the very
20 small print disclosed only "up to". In the store, Keating, again enticed by a sign which clearly
21 stated 33 percent off, and in small print the words "or more," examined a table of socks. None of
22 the items at all were marked at reductions of more than 33 percent, and thus the representation
23 was likely to deceive. Keating purchased four items, three of which had a hand written reduced
24 price marked upon them which represented 33 percent reduction. Upon examining her receipt at
25 home, Keating found that she had received a sales price on only one item, and thus she was forced
26 to return to the store at her own time and expense. The sales assistant told Keating that there were

27 _____
² Exhibit 11, photographs of register.

1 never any items intended for sale at prices reduced more than 33 percent in that department and
2 further that she had not received the sales price because "we don't ring up the hand-written price,
3 we use the bar code and charge the price that is entered on the computer." (Exhibit 13 receipts and
4 photographs of table display and sign.)

5 18. On 1/3/2014, then residing in California, following solicitation from Nordstrom as
6 to a sale, Keating made several substantial purchases totaling more than \$600 in the Children's
7 Department at the Stonestown Galleria store, in San Francisco, California. However, many of the
8 prices rung up by the cashier did not reflect the savings promised online. Keating was forced to
9 research the issue and return to the store for an adjustment. Out of 19 items purchased that day,
10 and despite prominently displayed signage, Keating received a sales or promo price on only 1
11 item, and 4 other items were charged at a price in excess of the advertised sales prices, thus both
12 the sale and the sale prices were phantom, and Keating would not have spent her time going to the
13 store but for the misleading advertisement. It took Keating many hours to receive a price
14 adjustment and refund for the overpriced items (for example a sweater blanket charged at \$32.16,
15 plus tax, was later adjusted to the advertised price of \$23.98. Exhibit 14).

16 19. During the period commencing four years before the filing of the initial complaint,
17 Keating regularly received solicitations from Nordstrom to shop in its stores including while she
18 was a visitor and/or resident of California and relying on Nordstrom's offers of savings Keating
19 purchased dozens of items. On or around July 20, 2013 Keating purchased Nordstrom brand
20 towels, items which she has regularly replenished during the class periods. Keating alleges that
21 although the towels were reduced from their regular full price, the amount of the savings was
22 deceptively represented as to the regular price of two or more, such that her actual savings on her
23 purchase was a smaller percentage than that prominently represented by Nordstrom. (Exhibit 15
24 sample of advertisement.) Keating again purchased multiples of towels as a baby gift. Keating
25 seeks to represent a putative class who purchased towels based on their reliance of Nordstrom's
26 representations, and to seek an injunction to require Nordstrom to cease and desist this practice
27 which is has a tendency and/or intended to induce reasonable consumers to make purchases they

1 otherwise would not.

2 20. On November 22, 2014, as part of a purchase of multiple items, Keating also
3 purchased socks from a display to which a save 25 percent sign was affixed. Upon finding that the
4 socks she had paid for were not in her bag when she got home, Keating returned to the store two
5 days later with her bank receipt and was told that the socks had been returned to the display.
6 Keating explained that the socks belonged to her and that she had also been charged more than the
7 posted price for the socks which were regularly \$6.50 each or three for \$16. First, the items
8 continued to ring up at \$6.50 each, then Keating was offered the price of \$5.33 each, then \$4.87.
9 Keating had to ask for a manager to intervene in order to receive the correct price of twenty-five
10 percent savings on \$16, or \$4.00 each, by which time she had gotten a parking ticket because her
11 meter had expired. (All Exhibit 16.)

12 21. On or about September 10, 2017, Keating purchased a blanket wrap shawl from
13 the Anchorage Nordstrom in the end of summer sale. (Exhibit 17.) Nordstrom represented that
14 this item was being offered at a savings of fifty percent from the regular price, i.e. \$45, reduced to
15 \$22.49, see tag Exhibit 17. This was in fact a fall season accessory introduced at the anniversary
16 sale and bears a serrated tag from which the bottom half has been removed, and therefore Keating
17 does not know the prevailing market price of the wrap. On information and belief, Keating alleges
18 that the prevailing price for any reasonable period of time will be shown to be around \$30 the price
19 at which it was offered in the preseason sale, and that the savings she attained when she purchased
20 the wrap at \$22.49 was 25 percent from the true introductory price, not 50. Keating alleges
21 standing to represent the class of consumers who continue to be deceived by this practice, and to
22 obtain an order enjoining Nordstrom hereafter so that its consumers in Alaska and California may
23 make their purchases based on an informed decision as to the value and price of the item, rather
24 than the unreal and inflated savings they perceive.

25 22. Freitag has regularly shopped at the Anchorage Nordstrom store during the past
26 two years in reliance on its advertisements, including but not limited to door signs, in-store
27 catalogues and banner advertisements, and defendant's promises of a commitment to providing the

1 lowest possible prices and price matching, as well as its representations as to the existence of,
2 amount of and reason for discount prices. In reliance thereon, Freitag has made multiple
3 purchases, including but not limited to several pairs of sandals, several blouses and multiple pairs
4 of hosiery which she purchased within the two-year period preceding the filing of this lawsuit,
5 including but not limited to fashion items purchased in the 2017 summer sale, which had
6 previously been on sale in the preseason sale.³ On Friday, November 23, 2017, lured by
7 Nordstrom's advertisements of a Black Friday sale with purported extra savings of 20 percent
8 from the price of previously marked down sale merchandise, Freitag purchased a scarf. The price
9 rang up incorrectly at the full price, although the sales assistant adjusted it manually to the
10 handwritten price. Upon checking her receipt and the website for the item, Freitag learned that the
11 handwritten hang tag price did not reflect the full sale price for the item, and accordingly she had
12 not received the extra Black Friday discount. Freitag alleges that Nordstrom is not a retailer which
13 charges premium prices to Alaska consumers. Accordingly, although the item was advertised on
14 the website for \$37.44, she was charged \$46.80 in violation of Alaska law. (Exhibit 18.) Freitag
15 also learned that Nordstrom quickly deletes the online record of sales prices, including by
16 rerouting hyperlinks and by removing the sales price history, such that she was only able to
17 establish that she was overcharged because she checked the website and her receipt on the day of
18 purchase, and further that information was not available on immediately following days. Freitag
19 has regularly shopped in Nordstrom sales, including half-yearly, preseason and summer sales
20 within the past two years. Freitag was not aware that the reference prices affixed to Nordstrom's
21 sale goods were not a true representation of the prevailing prices at which substantial quantities
22 had been sold nor a true representation of the prevailing price at which the items had been offered
23 for sale during the preceding 90 days. Freitag would also have researched prices before shopping
24 at Nordstrom had Nordstrom made prominent and full disclosure of the limits on its price-
25 matching policy and commitment to bringing the lowest possible prices to her, which it did not.

26
27 ³ Freitag did not keep receipts for all of her purchases from Nordstrom over the years, and further she occasionally paid cash.

1 Freitag relied on Nordstrom's pricing representations in deciding to frequent its store, and in
2 making her decisions to purchase goods, including her assessment of the value and savings being
3 offered to her.

4 23. Rheeston has regularly shopped at the San Francisco Westfield Center and
5 Stonestown Galleria Nordstrom stores during the past four years in reliance on its advertisements,
6 its promises of lowest possible prices and price matching, as well as the existence of, amount of
7 and reason for discount prices. In reliance thereon, Rheeston has made multiple purchases,
8 including but not limited to several pairs of sandals, Nordstrom own-brand tops and a dress, and
9 sunglasses purchased within the past 12 months. Rheeston has made other purchases at Nordstrom
10 during the four years preceding the filing of this action, including purchases made during the
11 preseason sale including clothing, shoes, towels and a beauty box. Rheeston made a purchase of
12 metallic FitFlops sandals in the 2016 summer sale. (Exhibit 19, Rheeston e-receipt for anniversary
13 sale and photograph of Fitflops.) Rheeston has been charged more at the cash register than the
14 marked price for a purchase and was required to return to the store to request a refund when she
15 happened to notice the error. Rheeston has shopped in Nordstrom sales, including the half-yearly,
16 preseason and summer sales within the past four years, and was not aware that the reference prices
17 affixed to Nordstrom's sale goods were not a true representation of the prevailing prices at which
18 the goods were previously sold in substantial quantities or offered during the preceding 90 days.
19 Rheeston relied on Nordstrom's pricing representations in deciding to frequent its stores, and in
20 making her decisions to purchase goods, including her assessment of the value and savings being
21 offered to her. Rheeston would have researched prices before shopping at Nordstrom had
22 Nordstrom made prominent and full disclosure of the limits on its price-matching policy and
23 commitment to bringing the lowest possible prices to her, which it did not. Rheeston would not
24 have purchased goods had she known that the savings and value were inaccurately represented.

25 24. Alaska and California consumers, as with Plaintiffs, are influenced in their
26 shopping decisions by the perception of value and savings. Consumers, including Plaintiffs, rely
27 on the accuracy of price scanners and the cash registers at sophisticated nationwide retailers such

1 as Nordstrom. Nordstrom's pattern and practice of advertising sales in emails, webpages, floor
2 sets, store signage, and handwritten prices on individual items is damaging to all consumers when
3 it fails to deliver on such sale prices. Alaska and California consumers, including Plaintiffs, in
4 making their decisions to purchase from Nordstrom necessarily rely upon the original or
5 "reference" price to determine 1) the value of an item, 2) the prevailing market price for that item
6 at both Nordstrom and its competitors (by virtue of its price matching and low price commitment),
7 3) the savings on that price being offered to them, and 4) the price that will be charged to their
8 cards. Nordstrom serrated hang tags are designed to present a reference price comparison that is
9 misleading to reasonable consumers as to the value of an item, and the reason for, existence and
10 amount of savings. Consumer perceptions of value and their willingness to buy a product goes up
11 as the discount increases, and correspondingly their desire to shop around goes down and
12 Nordstrom profits increase.

13 **JURISDICTION AND VENUE**

14 25. This Court has jurisdiction over this action under the Class Action Fairness
15 Act of 2005. Pursuant to 28 USC 1332(d)(2) and (6) this Court has jurisdiction because the
16 aggregate claims of the class exceed Five Million Dollars, exclusive of costs, and each of the
17 putative class representatives is a citizen of a different state than Nordstrom.

18 26. The U.S. District Court for the District of Alaska has personal jurisdiction over
19 Nordstrom because it is licensed to do business and does business in the States of Alaska
20 and has intentionally availed itself of the Alaska market, so as to make the exercise of
21 jurisdiction within this venue consistent with fair play.

22 27. The deceptive sales practices described herein are identical in impact to the
23 California class as the Alaska class of consumers, including those residents of both states
24 who make internet purchases and/or who shop while traveling in either state. Consumers,
25 including Plaintiffs, reasonably expect to receive the savings promised by a retailer and/or a
26 ticketed price, and reasonably believe the reasons for and extent of savings represented will
27 be afforded.

1 **CLASS ACTION ALLEGATIONS**

2 28. Class Definition: Plaintiffs seek to bring this suit as a class action pursuant to
3 Business & Professions Code section 17203, and the Class Action Fairness Act on behalf of
4 themselves and all other similarly-situated persons as a member of a Class defined
5 hereinbelow.

6 All persons who reside in the States of Alaska and California and who within the
7 applicable statute of limitations preceding the filing of this action purchased goods
8 (for which they did not receive refunds or other credit) from Nordstrom which
9 reflected a purported discount price whether by posted signage, online
10 advertisements including webpages and emails and/or by handwritten amendment
11 to the affixed hang tag price, and who were not afforded that indicated sales price
12 at the time of purchase.

13 The putative classes will also include Alaska and California residents who
14 purchased items with a pre-season and summer sale hang tag, and who did not
15 return their merchandise for refund or credit. The putative class will also include
16 those who purchased items that are regularly discounted for multiple purchases, and for
17 whom the purported percentage of savings was misrepresented.

18 The putative classes will include all Nordstrom customers who made purchases as
19 a result of inducements by Nordstrom of an alleged commitment to low prices and
20 price matching, and/or who suffered detriment as a result of their reliance because
21 Nordstrom did not act to give substance to that claim and/or did not effect price
22 matching even where it had knowledge of lower prevailing market prices.

23 The California and Alaska classes will include all customers who paid more for
24 their purchases than they otherwise would have done and/or who bought items
25 when they otherwise would not have, but for the representations made by
26 Nordstrom as to the price it would sell goods at, the prevailing market price, and
27 the reason for, amount of and existence of savings.

The Alaska class will include all Nordstrom customers, because all were subject to
deceptive sales practices including deceptive advertising.

28 29. Numerosity: The proposed Class is sufficiently numerous in that it is believed that
29 Nordstrom induced tens of thousands of consumers to purchase goods through the false
30 perception that they were saving money. Class members are so numerous and are dispersed
31 throughout the states that joinder of all Class members is impracticable. Class members can be
32 identified by, *inter alia*, records maintained by Defendant, including but not limited to its email
33 receipts, catalogue and email distribution addresses, personal shopper database, Nordstrom
34 consumer rewards program, its store credit cards and/or other personally identifying information
35 it shares with entities such as Retail Equation having to do with consumers, credit cards and
36 return activity.

1 Nordstrom violates the unfair, fraudulent and unlawful prongs of the UCL by
2 charging its customers more than the marked prices, and by falsely representing
3 the percentages of savings offered to customers. Nordstrom also violates Section
4 17500, the False Advertising prong by solicitation of consumers through printed,
5 posted, email and internet banner advertising materials that falsely represent
6 savings and value. Specifically, Nordstrom misrepresents the value of savings it
7 purportedly offers by omitting to accurately disclose the prevailing price at which
8 its preseason and summer sale goods were previously or will prospectively be sold.
9 Nordstrom further misleads consumers by omitting to make full and prominent
10 disclosure of its price matching policy, inducing them to rely on its prominent
11 claims of price matching and commitment to bringing the best possible prices, thus
12 encouraging them to make purchases with it rather than research their own price
13 comparisons.

14 33. By failing to ensure that its point of sale equipment registers accurately charge its
15 customers the affixed or advertised sale price of its merchandise, Nordstrom violates California
16 Business & Professions Section 12024.2(a)(1) and (2). Because of this negligence, California
17 residents and visitors to Nordstrom stores in California were overcharged.

18 34. Nordstrom's advertising practices are false and/or deceptive and/or likely to cause
19 confusion to reasonable customers, including Plaintiffs, including but not limited to that
20 Nordstrom misstates and/or omits to fully and accurately state the prevailing market price of
21 goods it offers in the preseason sale and subsequent sales of that merchandise including during
22 the summer sale. On information and belief, Plaintiffs contend that Nordstrom concealed from its
23 customers that few, if any, preseason goods would ever be sold at the full reference price and/or
24 concealed from its customers that such preseason goods would not be offered at the full reference
25 price for any significant period of time, but rather would be promptly and further discounted. On
26 information and belief, Nordstrom purchased its preseason goods in such limited quantities so to
27 satisfy the market demand for the duration of the sale, but in insufficient quantities and items of a
type that do not reflect staple goods that Nordstrom would sell year-round at the purported full
price following the alleged preseason reduced prices, and therefore knew or should have known
that its representation as the prevailing market price was misleading. As a result, consumers,
including Plaintiffs, bought goods that would otherwise not have had they known the prevailing
market price was illusory and/or paid more than they otherwise would have paid had they known
that the percentage savings being offered to them were less than that represented by Defendant

1 because of its use of the hang tags.

2 35. As a result of these acts and practices described in paragraphs 10-14, 18-19, and
3 23, which Plaintiffs allege also violate predicate laws including but not limited California
4 Business & Professions Section 12024.2(a)(1) and (2), and Business & Professions Code 17501
5 (as to the serrated hang tags used in the preseason sales and sales of that merchandise thereafter
6 offered at subsequent sales including the summer sale), and the Federal Trade Commission
7 guidelines, Nordstrom has improperly obtained money from Plaintiffs and others similarly
8 situated, who would not have made their purchases and spent their time visiting the stores but for
9 the misleading advertisements of Defendant.

10 36. Nordstrom should be held to disgorge its profits and provide restitution to
11 Plaintiffs and the class of consumers it deceived.

12 37. Keating and Rheeston also ask that this Court enjoin Nordstrom from continuing
13 to engage in the fraudulent practices which violate the California Unfair Competition Law, to
14 protect Plaintiffs and the general public in and about their future purchases from Defendant.

15 **SECOND CAUSE OF ACTION**

16 (Violation of AS 45.50.471)

17 38. Plaintiffs Keating and Freitag incorporate by reference paragraphs 1-7, hereof as
18 though set forth in full here, including Nordstrom's false and deceptive acts set forth infra.

19 39. Nordstrom's advertising practices are false and/or deceptive and/or likely to cause
20 confusion to reasonable customers, including Plaintiffs, including but not limited to Nordstrom's
21 sales practices as more fully described herein in paragraphs 4-7, 8-17, and 20-22 are likely to be
22 deceptive, including but not limited to the accuracy of its cash registers, the original or "regular"
23 reference prices of merchandise including its purported value and the percentage of discounts or
24 savings offered in its preseason and summer sales vis-à-vis the prevailing price of said
25 merchandise. Nordstrom also makes misleading representations to Alaska consumers about its
26 commitment to offering everyday low prices and price matching.

27 40. Nordstrom's acts are prohibited in Alaska pursuant to AS 45.50.471(a) and

1 (b)(10), (11) and (12). Keating and Freitag and other similarly situated Alaska consumers were
2 exposed to Nordstrom's misleading advertising which practices are unlawful pursuant to section
3 (12) of AS 45.50.471(b). Keating, and other similarly situated consumers whose identities are
4 known to Nordstrom, were subject to inaccurate charges at the register because of Defendant's
5 negligence in ensuring that its point of sale equipment registers accurate charges that reflect the
6 affixed or advertised prices. Keating and Freitag, and other similarly situated consumers bought
7 items that they otherwise would not have in reliance on Nordstrom's commitment to bringing
8 them the best possible prices and/or its price matching representations, and/or paid more for their
9 purchases because of their misplaced reliance on deceptive policies. On information and belief,
10 Plaintiffs contend that Nordstrom concealed from its customers that few, if any, preseason goods
11 would ever be sold at the full reference price and/or concealed from its customers that such
12 preseason goods would not be offered at the full reference price for any significant period of time,
13 but rather would be promptly and further discounted. On information and belief, Nordstrom
14 purchased its preseason goods in such limited quantities so to satisfy the market demand for the
15 duration of the sale, but in insufficient quantities and items of a type that do not reflect staple
16 goods that Nordstrom would sell year-round at the purported full price following the alleged
17 preseason reduced prices, and therefore knew or should have known that its representation as the
18 prevailing market price was misleading. Accordingly, Nordstrom's customers made purchases in
19 reliance on Nordstrom's representations, including Keating and Freitag who shopped at the
20 preseason, summer, and other sales events hosted by Nordstrom and were deceived by
21 Nordstrom's false representations as to the price they would be charged at the register and as to
22 the amounts, existence of and reason for purported discounts.

23 41. On or about February 16, 2017, counsel for Keating mailed by certified mail a
24 Notice to Nordstrom setting forth her contentions in regard to Nordstrom's violations of AS
25 45.50.471 and giving notice of this lawsuit. Thirty days have expired therefrom. Upon
26 information and belief, Nordstrom has failed and refused to discontinue the practices complained
27

1 of herein, save and except for minor changes to its price match policy and floor set signs.⁴

2 42. Plaintiffs request equitable relief in the form of disgorgement, statutory penalties
3 in the amount of three times damages, or \$500 per transaction, whichever is greater, and such
4 other and further relief as may be deemed appropriate by the Court.

5 43. To the extent that Nordstrom's deception may be found to be willful or grossly
6 negligent, Plaintiffs also request an award of punitive damages so as to deter future violations of
7 the State's consumer protection laws.

8 44. Plaintiffs further request that the Court enjoin Nordstrom from continuing to
9 engage in sales practices prohibited by Alaska statute to protect Plaintiffs and the general public
10 in their future purchases from Nordstrom.

11 45. Plaintiffs request an award of attorneys' fees and costs in their favor on this cause
12 of action.

13
14 **THIRD CAUSE OF ACTION**

15 (Violation of California Civil Code Section 1750)

16 46. Plaintiffs Keating and Rheeston incorporate by reference paragraphs 1-8, 14-15,
17 18-19 and 23 hereof as though set forth in full here, including Nordstrom's deceptive acts set forth
18 infra.

19 47. Beginning at an exact date unknown to Plaintiffs but on information and belief at
20 least during the three-year period prior to the filing of this action, Defendants have committed
21 acts of untrue and misleading advertising in the state of California, as set forth at Civil Code
22 Section 1750 *et seq.*, as more fully described herein.

23 48. Nordstrom's sales practices as more fully described herein in paragraphs 13, 18
24 and 22 are deceptive, including but not limited to the accuracy of its cash registers, the original or
25 regular prices of merchandise including its purported value and the percentage of discounts or
26 savings offered in its preseason and summer sales vis-à-vis the prevailing price of said

27 _____
⁴ Rather than "33% or more" for example.

1 merchandise. Nordstrom misleads its customer either by causing them to believe, as did
2 Rheeston that its merchandise was previously offered for a reasonable length of time at the
3 affixed reference price on its serrated hang tags in turn causing them to believe they are getting a
4 better bargain than they are, and/or the lower portion of the Nordstrom also makes misleading
5 representations to California consumers about its commitment to offering everyday low prices
6 and price matching.

7 49. On information and belief, Plaintiffs contend that Nordstrom concealed from them
8 and its California customers that few, if any, preseason goods would ever be sold at the full
9 reference price and/or concealed from its customers that such preseason goods would not be
10 offered at the full reference price for any significant period of time, but rather would be promptly
11 and further discounted. On information and belief, Nordstrom purchased its preseason goods in
12 such limited quantities so to satisfy the market demand for the duration of the sale, but in
13 insufficient quantities and items of a type that do not reflect staple goods that Nordstrom would
14 sell year-round at the purported full price following the alleged preseason reduced prices, and
15 therefore knew or should have known that its representation as the prevailing market price was
16 misleading. Said conduct violated Civil Code Section 1770(a)(9) and (13) and deceived
17 Nordstrom consumers, including Keating and Rheeston.

18 50. Nordstrom consumers, including Keating and Rheeston, shopped at Nordstrom
19 California brick and mortar stores and online and were damaged by their reliance on Nordstrom's
20 representations as to prices, including price matching and amounts of and reasons for discounts.
21 Keating (while a resident of the State and while a visitor to California) and Rheeston visited
22 Nordstrom California stores, perused online advertisements, banner ads and/or emails, and in-
23 store catalogues throughout the three-year period preceding the filing of this lawsuit, and relying
24 thereon made multiple purchases, including but not limited to those described with particularity
25 hereinabove, and further spent valuable time they otherwise would not have but for their beliefs
26 of the accuracy of the prices, including the value and savings being offered to them by Defendant.
27 Plaintiffs lost money and time as a result of Defendant's misrepresentations and they and the

1 similarly situated consumers should be granted an amount of restitution sufficient to compensate
2 for the difference in their true savings and the illusion created by Defendant.

3 51. Plaintiffs and the class are entitled to damages under Civil Code 1780(a)(1) and/or
4 restitution under Civil Code 1780(a)(3); Plaintiff Keating served, on or about February 16, 2017,
5 on Nordstrom the writing required by Civil Code 1782 including sending it by certified mail
6 return receipt. Defendant failed and refused to take action within thirty days in response to the
7 writing sent to them to cease and desist from the deceptive practices alleged herein.

8 52. On information and belief, Nordstrom has done nothing to identify similarly
9 situated class members to offer them refunds for overcharges, nor has it discontinued the practice
10 of inflated reference prices used in the preseason sale and summer sales when offering identical
11 items for sale in the summer sale. It continues to mislead its customers as to its commitment to
12 best possible prices and the limits of the price match guarantee. Thus, Plaintiffs request this
13 Court issue an injunction to protect the absent class members to protect Plaintiffs and the general
14 public in their future purchases from Nordstrom.

15 53. Plaintiffs request equitable relief in the form of reimbursement, statutory penalties,
16 punitive damages, injunction, and an award of attorneys' fees and costs pursuant to California
17 Civil Code Section 1780, and such other and further relief as the Court may deem appropriate.

18
19 **FOURTH CAUSE OF ACTION**

20 (Negligent Breach of Contract)

21 54. Plaintiff Keating incorporates by reference paragraphs 1-23 hereof as though set
22 forth in full here, including Nordstrom's deceptive acts set forth infra.

23 55. Keating and other similarly situated consumers were induced to shop at Nordstrom
24 during the class period as a result of solicitations to save money on discounted and sale goods.

25 56. On November 22, 2014, Defendant made a statement through signage posted in its
26 Anchorage as to the price it would charge for a purchase of socks, indicating that it would afford
27 Keating 25 percent savings from the regular price. Relying on that representation, Keating paid

1 for her purchase of socks, and thus a contract was formed.

2 57. Upon arriving home, Keating found that she did not have the socks she had paid
3 for, and that further she had been overcharged for them. Thus, the contract was breached.

4 58. Keating alleges that Nordstrom has a pattern and practice of failing to use adequate
5 care to ensure that its consumers, including Keating, are charged a price at the cash register which
6 accurately reflects the savings it promises them to induce them to part with their money.

7 59. When Keating returned to the store on November 24, 2014, it took her almost an
8 hour for Nordstrom to locate her paid for purchase and eventually accord her the correct price for
9 her purchase. Keating would not have purchased the socks had they not been on sale, and thus
10 the negligence of Nordstrom in failing to deliver on its contract was a substantial factor in her
11 damages.

12 60. Keating seeks permission to represent a class of consumers who have been
13 damaged within the past three years as a result of Nordstrom's continuing contractual breach by
14 failing to charge the correct price for its goods, including those items which involve a discount on
15 multiple purchases.

16
17 **PRAYER**

18 WHEREFORE, plaintiff prays for relief as set forth hereinafter.

- 19 1. The Court enter judgment finding the sales practices of Nordstrom to constitute
20 violations of the unfair trade practices acts of Alaska and California;
- 21 2. The Court award punitive damages pursuant to the consumer protection acts to the
22 extent Defendant is found to be willfully negligent in and about its actions;
- 23 3. The Court order disgorgement and restitution of all wrongfully withheld sums to the
24 Plaintiffs and the class members;
- 25 4. The Court award statutory penalties, pursuant to the consumer protection acts;
- 26 5. The Court award Plaintiffs and the class its attorneys' fees and costs;
- 27 6. The Court enter an order enjoining Defendant from continuing to engage in the acts

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complained of herein; and

7. The Court award such other and further relief as it may deem appropriate.

DATED: February 22, 2018

By _____s/J. Skala _____
JASON SKALA
Attorneys for Plaintiffs Keating, Freitag & Rheeston
And all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs, Keating, Freitag & Rheeston, on their own behalf and on behalf of all others similarly situated, hereby demand trial by jury on all causes of action save and except the Business & Professions Claims.

DATED: February 22, 2018

By _____s/J. Skala _____
JASON SKALA
Attorneys for Plaintiffs Keating, Freitag & Rheeston
And all others similarly situated