UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RASHI PINCKNEY, JACK FERGUSON, and RAY EATON JR. on behalf of themselves and all others similarly situated, Plaintiffs, vs. NORDSTROM, INC., Defendant.	**Civil Action No.:** **CLASS ACTION COMPLAINT**

Plaintiff Rashi Pinckney, Jack Ferguson, and Ray Eaton Jr. ("Plaintiffs"), individually and on behalf of themselves and the Class defined below of similarly situated persons, alleges the following against Nordstrom, Inc. ("Defendant" or "Nordstrom") based upon personal knowledge with respect to themselves and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

NATURE OF THE ACTION

1. It is both unfair and unlawful for entities like Nordstrom to impose discriminatory and punitive health insurance surcharges on employees who use tobacco products. This lawsuit challenges Nordstrom's unlawful practice of charging a "tobacco surcharge" without complying with the regulatory requirements under the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, wellness programs must offer, and provide notice of, a reasonable alternative standard that allows all participants to obtain the "***full reward***"—including refunds for surcharges paid while completing the program. 29 U.S.C. § 1182(b)(2)(B); 42 U.S.C. § 300gg-4(j)(3)(D). Rather than comply with these requirements, the Nordstrom Welfare Benefit Plan (the "Plan") imposes a flat discriminatory tobacco surcharge without providing participants with a

reasonable alternative standard and failed to provide notice of the availability of a reasonable alternative standard, violating federal regulations and depriving employees of benefits to which they are entitled under ERISA.

2. Tobacco surcharges have become more prevalent in recent years but to be lawful plans can impose these surcharges only in connection with *compliant* "wellness programs," meaning they must adhere to strict rules set forth by ERISA and the implementing regulations established by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the "Departments") over ten years ago in 2014. ERISA imbues the Departments with the authority to promulgate regulations interpreting ERISA § 702, 29 U.S.C. § 1182, the statute's non-discrimination provision. Accordingly, the Departments have issued clear regulatory criteria that "must be satisfied" to qualify for the statutory exception or safe-harbor, which they may invoke only if they can affirmatively demonstrate full compliance with all these strict requirements in response to claims that their program is discriminatory. Moreover, courts must defer to the agency's interpretation of its own regulations, if that interpretation is neither plainly erroneous nor inconsistent with the regulatory framework, *Auer v. Robbins*, 519 U.S. 452 (1997), ensuring that plans cannot evade ERISA's anti-discrimination protections by selectively or improperly applying these rules.

3. The strict regulatory requirements are meant to ensure that wellness programs actually promote health and preclude discrimination, instead of wellness programs that are "subterfuge[s] for discriminating based on a health factor." The regulations make clear that for plans to be compliant, they must provide a clearly defined, reasonable alternative standard that allows all participants to obtain the full reward, including retroactive refunds of surcharges paid while completing the alternative standard. A wellness program must be genuinely designed to

improve health or prevent disease, rather than functioning as an improper penalty imposed on certain participants under the guise of a health initiative. Nordstrom's Plan fails to clearly establish a reasonable alternative standard, did not notify employees that such an alternative was available, did not ensure that employees who complete the alternative received the "full reward," and unlawfully shifted costs onto employees in violation of ERISA's wellness program regulations.

4. The need for regulatory safeguards surrounding these types of wellness programs is underscored by studies showing little evidence that wellness programs effectively reduce healthcare costs through health improvement. Instead, the savings employers claim often result in cost-shifting onto employees with higher health risks, disproportionately burdening low-income and vulnerable workers who end up subsidizing their healthier colleagues.[1] The regulatory safeguards seek to prevent wellness programs from being misused as thinly veiled revenue-generating schemes at the expense of employees who are least able to afford the additional costs by shifting the burden to plan sponsors to demonstrate compliance once a participant alleges discriminatory surcharges. The goal is to ensure that wellness programs operate equitably and in a non-discriminatory manner, and to promote genuine health improvements

5. Outcome-based programs,[2] such as smoking cessation programs, must offer a clearly defined "*reasonable* alternative standard," which is an alternative way for "all similarly

---

[1] Horwitz, J. R., Kelly, B. D., & DiNardo, J. E. (2013). *Wellness incentives in the workplace: Cost savings through cost shifting to unhealthy workers*. Health Affairs, 32(3), 468–476, 474 ("wellness programs may undermine laws meant to prevent discrimination on the basis of health status. Since racial minorities and people with low socioeconomic status are more likely than others to have more health risks, they are also more likely to be adversely affected by cost shifting"); *see also* Dorilas, E., Hill, S. C., & Pesko, M. F. (2022). *Tobacco surcharges associated with reduced ACA marketplace enrollment*. Health Affairs, 41(3), Abstract (finding that tobacco surcharges are significant barriers to affordable health insurance).

[2] "An outcome-based wellness program is a type of health-contingent wellness program that

situated individuals" to obtain the reward (or avoid a penalty) if they are unable to meet the initial wellness program standard (i.e., being tobacco-free). Critically, ERISA's implementing regulations require that "the *same*, *full reward*" must be provided to individuals who complete the alternative standard, regardless of when they do so during the plan year.[3] The Department of Labor ("DOL") has made clear that participants should not be forced to rush through the program under the threat of continued surcharges and that every individual participating in the program must receive the same reward as provided to non-smokers. *Id.* The Departments made this requirement clear when they stated it is "[t]he intention of the Departments . . . that, regardless of the type of wellness program, ***every individual participating in the program*** should be able to receive ***the full amount of any reward or incentive*** . . . ." *Id.*, 33160 (emphasis added). Nordstrom violates these requirements by failing to provide a reasonable alternative standard that provides full reimbursement to employees who complete that standard, operating a non-compliant penalty structure rather than a lawful wellness incentive, and failing to clearly communicate the availability of a reasonable alternative standard in all plan materials referencing tobacco-related premium differentials, including plan documents and summary plan descriptions ("SPDs"). *Id.* These failures constitute direct violations of ERISA's wellness program regulations.

---

requires an individual to attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward." 29 C.F.R. § 2590.702(f)(1)(v).

[3] *Incentives for Nondiscriminatory Wellness Programs in Group Health Plans*, 78 Fed. Reg. 33158, 33163 (June 3, 2013) (hereinafter the "**Final Regulations**") ("while an individual may take some time to request, establish, and satisfy a reasonable alternative standard, ***the same, full reward must be provided to that individual*** as is provided to individuals who meet the initial standard for that plan year. (For example, if a calendar year plan offers a health-contingent wellness program with a premium discount and an individual who qualifies for a reasonable alternative standard satisfies that alternative on April 1, the plan or issuer must provide the premium discounts for January, February, and March to that individual.)" (emphasis added)).

6. Nordstrom cannot qualify for the statutory safe harbor because the Plan fails to satisfy the essential regulatory criteria, which "must be satisfied," (*id*., 33160) for a wellness program to be lawful under ERISA. Final Regulations, 33160. Critically, Nordstrom offers no reasonable alternative standard that delivers the "full reward" to participants who satisfy it mid-year, as required by ERISA § 702, 29 U.S.C. § 1182, and 29 C.F.R. § 2590.702(f)(4)(iv). The Plan's surcharge policy merely *prospectively* halts future charges once a participant enrolls in cessation or goes tobacco-free; it does not refund surcharges already paid that year.

7. Moreover, Nordstrom's failure to disclose the alternative standard or any mechanism for retroactive reimbursement in its plan materials—especially in Benefit Guides before 2025—compounds the violation. Nordstrom failed to provide any notice of a reasonable alternative standard in pre-2025 Benefits Guides or how to avoid the surcharge, despite introducing more compliant language only in the 2025 edition. Prior materials *omit entirely* any mention of an alternative standard or retroactive reimbursement, despite the 2024 Benefit Guide clearly stating that "[t]here is a surcharge of $20 twice-monthly if you, your spouse/registered domestic partner or adult child . . . use tobacco products." ERISA clearly mandates disclosure of reasonable alternative standards (including physician accommodations and contact info) in any materials referencing tobacco premium differentials but Nordstrom did not mention these until the updated 2025 Guide (and even then failed to include contact information to access the alternative standard), leaving earlier participants uninformed and unable to exercise their rights. Upon information and belief, Nordstrom failed to include the required notice in all Plan/Benefits materials discussing the premium differential, as required. Final Regulations, 33166 ("a plan disclosure that references premium differential based on tobacco use . . . ***must include this disclosure***." (emphasis added))

8. These are independent breaches of ERISA's wellness program requirements, not technicalities. Because Nordstrom fails to offer an alternative standard that fully reimburses those participants who satisfy the alternative standard, and because it failed to provide necessary disclosures in plan materials discussing the premium differential until 2025, Nordstrom cannot invoke ERISA's safe harbor defense, as its program neither offers a compliant alternative standard nor provides adequate notice, making its tobacco surcharge scheme not only unlawful but also discriminatory under ERISA.

9. Nordstrom bears the burden of proving that its wellness program fully complies with every regulatory requirement under ERISA, including providing a clearly defined, reasonable alternative standard that makes available the "full reward" for all similarly situated individuals. Nordstrom cannot meet this burden because its wellness program does not reimburse participants. Even if it did, Nordstrom failed to provide notice of its availability in all plan materials discussing the surcharge prior to 2025. Its failure to offer and communicate a reasonable alternative standard makes its surcharge program facially unlawful under ERISA, and no amount of *post hoc* justifications can cure this fundamental defect. Nordstrom's Plan is not a "program[] of health promotion or disease prevention" as required by ERISA but instead an impermissible cost-shifting scheme that unlawfully penalizes employees for their health status.

10. Plaintiffs Rashi Pinckney, Jack Ferguson, and Ray Eaton are former employees of Nordstrom who paid the unlawful tobacco surcharges to maintain health insurance coverage under the Plan. This surcharge imposed an additional financial burden on Plaintiffs and continues to impose such a burden on those similarly situated.

11. Plaintiffs bring this lawsuit individually and on behalf of all similarly situated Plan participants and beneficiaries, seeking to recover these unlawfully charged fees and for Plan-wide

equitable relief to prevent Nordstrom from continuing to profit from its violations under 29 U.S.C. § 1109. Under 29 U.S.C. § 1109, Defendant is a fiduciary of the Plan who have a legal obligation to act in the best interests of Plan participants and to comply with federal law. Plaintiffs, on behalf of themselves and the Plan as a whole, seek appropriate equitable relief under 29 U.S.C. §§ 1132(a)(2) and (a)(3) to address Defendant's ongoing violations of ERISA's anti-discrimination provisions.

PARTIES

12. Plaintiff Rashi Pinckney is, and at all times mentioned herein was, an individual citizen of the State of California residing in the County of Los Angeles. Plaintiff was an employee of Nordstrom, who paid a tobacco surcharge associated with the health insurance offered through Nordstrom during his employment. Plaintiff Pinckney was required to pay this tobacco surcharge to maintain health insurance under the Plan.

13. Plaintiff Jack Ferguson is, and at all times mentioned herein was, an individual citizen of the State of Illinois residing in the County of Cook. Plaintiff was an employee of Nordstrom, who paid a tobacco surcharge associated with the health insurance offered through Nordstrom during his employment. Plaintiff Ferguson was required to pay this tobacco surcharge to maintain health insurance under the Plan.

14. Plaintiff Ray Eaton, Jr. is, and at all times mentioned herein was, an individual citizen of the State of Illinois residing in the County of Champaign. Plaintiff was an employee of Nordstrom, who paid a tobacco surcharge associated with the health insurance offered through Nordstrom during his employment. Plaintiff Eaton was required to pay this tobacco surcharge to maintain health insurance under the Plan.

15. Plaintiffs are participants in the Plan pursuant to 29 U.S.C. § 1002(7).

16. Nordstrom is a luxury department store chain with location across the country that generate billions of dollars in revenue annually. Nordstrom is a Washington corporation with its headquarters in Seattle, Washington.

17. Nordstrom is the sponsor of the Plan and the Plan Administrator under 29 U.S.C. § 1002(16). As of February 2024, there were over 62,000 participants in the Plan. Nordstrom's employee benefit plan is subject to the provisions and statutory requirements of ERISA pursuant to 29 U.S.C. § 1002(3).

JURISDICTION AND VENUE

18. The Court has subject matter jurisdiction pursuant to 29 U.S.C. §1132(e)(1) and § 28 U.S.C. 1331, as this suit seeks relief under ERISA, a federal statute. It also has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds $5 million, exclusive of interest and costs. Upon information and belief, the number of class members is over 100, many of whom have different citizenship from Defendant. Thus, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).

19. This Court has personal jurisdiction over Defendant because it is headquartered in this District. Defendant has purposefully availed itself of the privilege of conducting business in Washington.

20. Venue is proper in this District under 2 U.S.C. 1132§ (e)(2) because Defendant is headquartered in this District and this is a District in which Defendant may be found.

FACTUAL BACKGROUND

I. DEFENDANT'S TOBACCO SURCHARGE VIOLATES ERISA'S ANTI-DISCRIMINATION RULE

A. Statutory and Regulatory Requirements

21. To expand access to affordable health insurance coverage, the Affordable Care Act ("ACA") amended ERISA to prohibit any health insurer or medical plan from discriminating against participants in providing coverage or charging premiums based on a "health-related factor," including tobacco use. Under this rule, a plan "may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than such premium or contribution for a similarly situated individual enrolled in the plan based on any health-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual." ERISA § 702(b)(1), 29 U.S.C. § 1182(b)(1).

22. The statute permits group health plans to "establish[] premium discounts or rebates . . . in return for adherence to ***programs of health promotion and disease prevention***" (29 U.S.C. § 1182(b)(2)(B)(emphasis added)); however, these "wellness programs"—to qualify for this statutory safe-harbor exception—must strictly adhere to the mandated regulatory requirements.

23. Under ERISA § 505, 29 U.S.C. § 1135, Congress granted the Department of Labor the authority to issue regulations, including the power to establish regulations prohibiting discrimination against participants and beneficiaries based on their health status under ERISA § 702, 29 U.S.C. § 1182. This authority empowers the Secretary of Labor (the "Secretary") to "prescribe such regulations as he finds necessary or appropriate to carry out the provisions of" Title I of ERISA. (29 U.S.C. § 1135). Furthermore, ERISA § 734, 29 U.S.C. § 1191c, explicitly reinforces the Secretary's authority to issue regulations concerning group health plan requirements, which grants the power to "promulgate such regulations as may be necessary or appropriate to carry out the provisions" of ERISA Title I, Part 7. 29 U.S.C. § 1191c.

24. Exercising this delegated authority, in 2006, the Secretary issued regulations through the notice-and-comment rulemaking process outlining the criteria that a wellness program must meet to qualify for the premium non-discrimination exception under ERISA § 702(b). *See* Final Regulations, 33158–59. Following the amendments by the Affordable Care and Public Health Service Acts in 2010, the Departments, published proposed regulations in November 2012 to "amend the 2006 regulations regarding nondiscriminatory wellness programs." *Id.*, 33159. These regulations (i.e., the Final Regulations) were approved and signed in 2013 to be effective January 1, 2014. *Id.*, 33158.

25. The Final Regulations specify that health promotion or disease prevention programs, such as outcome-based wellness initiatives (i.e., smoking cessation programs), must meet detailed requirements to qualify for the safe harbor. As the Departments explained, these criteria "***must be satisfied*** in order for the plan or issuer to qualify for an exception to the prohibition on discrimination based on health status." *Id.*, 33163. "That is," the Departments explained, "these rules set forth criteria for an ***affirmative defense*** that can be used by plans and issuers in response to a claim that the plan or issuer discriminated" against participants. *Id.* (emphasis added). That means once a participant alleges a discriminatory surcharge, the burden shifts to the employer to prove that the surcharge is non-discriminatory because the wellness plan qualifies as a "program[] of health promotion and disease prevention" that satisfies *all* the necessary regulatory criteria.

26. Compliance with the regulatory criteria is not optional. These criteria serve as the standard by which these wellness programs can be evaluated and are the only lawful pathway for plans to impose health-based premium differentials without violating ERISA's anti-discrimination provisions. *See* Final Regulations, 33160 ("***these [F]inal [R]egulations set forth criteria for a***

program of health promotion or disease prevention . . . that ***must be satisfied*** in order for the plan or issuer to qualify for an exception to the prohibition on discrimination . . . .” (emphases added)).

27. Only by satisfying all of the criteria, can employers ensure their plans are wellness programs and “not a subterfuge for underwriting or reducing benefits based on health status.” *Id.* The criteria provide guidelines for employers to prevent them from using surcharges as a revenue-generating mechanism dressed up as a program of health promotion. If a program fails to meet even one of these requirements, the program does not qualify as a “program[] of health promotion” and cannot qualify under ERISA’s statutory carve-out. In that case, any premium differentials imposed based on a health factor violate the statute’s anti-discrimination provisions. *See* § 2590.702(f)(4) (describing the “[r]equirements for outcome-based wellness programs,” stating that a program “does not violate the provisions of this section ***only if all of the [] requirements are satisfied***.” (emphasis added)).[4] In sum, a wellness program that fails to satisfy each criterion is not a legitimate health promotion initiative but an unlawful penalty that discriminates based on health status, in direct violation of ERISA’s protections.[5]

---

[4] Congress codified parts of the 2006 regulations regulatory criteria when, through the Patient Protection Act (“PPA”) and ACA, it amended the PHSA, and incorporated (nearly verbatim) the regulatory language into ERISA. *See* 42 U.S.C. § 300gg-4(j)(3); 29 U.S.C. § 1185d(a)(1) (“[T]he provisions of part A of title XXVII of the [PHSA] [42 U.S.C. § 300gg *et seq*.] (as amended by the [PPA and ACA]) shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart[.]”). Since then, the Departments have, in accordance with the they were granted, updated the regulatory framework through the Final Regulations, refining and clarifying the requirements to ensure compliance with ERISA’s nondiscrimination provisions and the statutory criteria established by Congress. *See* 42 U.S.C. § 300gg-4(n) (“Nothing in this section shall be construed as prohibiting the Secretaries of Labor, Health and Human Services, or the Treasury from promulgating regulations in connection with this section”); *see also* 45 C.F.R. § 146.121(f) (adopting identical language to § 2590.702(f)).

[5] Congress adopted these regulatory criteria when, through the Patient Protection and Affordable Care Act, it amended the Public Health Service Act, incorporating these criteria into ERISA. *See*

B. Regulatory Criteria

28. To comply with ERISA and avoid unlawful discriminatory surcharges, outcome-based wellness programs must meet the following five (5) criteria:

(a) Frequency of opportunity to qualify: Participants must be given at least one chance annually to qualify for the reward associated with the program to ensure ongoing accessibility and fairness. 29 C.F.R. § 2590.702(f)(4)(i).

(b) Size of reward: penalties or rewards cannot exceed 50% of the cost of employee-only coverage. § 2590.702(f)(4)(ii)

(c) Reasonable design: programs must be "reasonably designed" to promote health and cannot be "a subterfuge for discriminating based on a health factor." This determination is based on all the relevant facts and circumstances. "To ensure that an outcome-based wellness program is reasonably designed to improve health and does not act as a subterfuge for underwriting or reducing benefits based on a health factor, a reasonable alternative standard to qualify for the reward must be provided to any individual who does not meet the initial standard based on a measurement, test, or screening. . . ." § 2590.702(f)(4)(iii)).

(d) Uniform availability and reasonable alternative standards: "The ***full reward*** under the outcome-based wellness program must be available to ***all similarly situated individuals***." 29 C.F.R. § 2590.702(f)(4)(iv).

---

42 U.S.C. § 300gg-4(j)(3); 29 U.S.C. § 1185d(a)(1) ("[T]he provisions of part A of title XXVII of the Public Health Service Act [42 U.S.C. § 300gg *et seq*.] (as amended by the Patient Protection and Affordable Care Act) shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart[.]").

(e) Notice of availability of reasonable alternative standard: notice must include (a) instructions on how to access the reasonable alternative standard; (b) contact information for inquiries about the alternative standard; and (c) an explicit statement that participants' personal physician's recommendations will be accommodated. *See* § 2590.702(f)(4)(v).

29. The Departments provided valuable insight into each of the criteria, reflecting their intent to operationalize the statute's protections in a manner that both promotes health and prevents discriminatory practices under ERISA.

30. Regarding the first criteria, "the once-per-year requirement was included as a bright-line standard for determining the minimum frequency that is consistent with a reasonable design for promoting good health or preventing disease." Final Regulations, 33162. The once-per-year requirement ensures that participants have a meaningful opportunity to participate in a reasonable alternative standard. Plans must ensure that at least once every 12-month period, participants are provided with an opportunity to avoid the surcharge for the entire plan year. Final Regulations, 33163 ("while an individual may take some time to request, establish, and satisfy a reasonable alternative standard, the same, full reward must be provided to that individual as is provided to individuals who meet the initial standard ***for that plan year***." (emphasis added)).

31. A key requirement of the fourth criterion for outcome-based programs is that the "full reward" must be available to "all similarly situated individuals[,]" regardless of when they meet the reasonable alternative standard during the plan year. *See id.*, 33165. Critically, the Departments clearly state that it is "[t]he intention of the Departments . . . that, regardless of the type of wellness program, ***every individual*** participating in the program should be able to receive the ***full amount of any reward or incentive***. . . ." *Id.* (emphases added). While plans have flexibility

in determining the manner in which they provide the "full reward," providing the "full reward" to every participant is ***mandatory***, regardless of when the participant satisfies the alternative standard. The Departments have made this clear:

> While an individual may take some time to request, establish, and satisfy a reasonable alternative standard, ***the same, full reward must be provided to that individual as is provided to individuals who meet the initial standard for that plan year***. (For example, if a calendar year plan offers a . . . premium discount and an individual . . . satisfies that alternative on April 1, the plan or issuer must provide the premium discounts for January, February, and March to that individual.) Plans and issuers have flexibility to determine ***how*** to provide the portion of the reward corresponding to the period before an alternative was satisfied (e.g., payment for the retroactive period or pro rata over the remainder of the year) ***as long as . . . the individual receives the full amount of the reward***.

Final Regulations, 33163 (emphases added).

32. The Final Regulations provide an example of a non-compliant plan that imposes a tobacco use surcharge but does not facilitate the participant's enrollment in or participation in a smoking cessation program. *See id.*, Example 8. Instead, the employer advises the participant to find a program, pay for it, and provide a certificate of completion. *Id*. The Final Regulations conclude that the plan is not compliant because it "has not offered a reasonable alternative standard . . . and the program fails to satisfy the requirements of paragraph (f) of this section." *Id.*; Final Regulations, 33180.

33. For health contingent wellness programs, the DOL Regulations require the notice be disclosed "in all plan materials describing the terms of" the program. 29 C.F.R. § 2590.702(f)(3) and (4) (emphasis added); *see also* 42 U.S.C § 300gg-4(j)(3)(E). Further, the Final Regulations establish that "[f]or ERISA plans, wellness program terms (including the availability of any reasonable alternative standard) are generally required to be disclosed in the summary plan description (SPD), as well as in the applicable governing plan documents . . . if compliance with

the wellness program affects premiums . . . under the terms of the plan." Final Regulations, 33166. Thus, plans that charge their participants more and fail to provide a reasonable alternative standard or the requisite notice violate these requirements, preventing these wellness programs from qualifying for the safe-harbor exception and establishing them as discriminatory wellness programs.

34. Nordstrom's tobacco surcharge is unlawful because it is a surcharge and not a premium discount or a rebate. Further, even if imposing a surcharge were permissible under ERISA, it would be permissible only if Nordstrom offered a compliant wellness program. However, Nordstrom does not provide a compliant wellness program because its program fails to comply with the Final Regulations governing wellness programs. As discussed, the Final Regulations provide that outcome-based wellness programs, such as those involving tobacco cessation programs, are permissible under ERISA ***only if all regulatory requirements are satisfied***. *See* 29 C.F.R. § 2590.702(f)(4).

II. DEFENDANT CANNOT AVAIL ITSELF OF ERISA'S SAFE HARBOR

35. Nordstrom's tobacco surcharge is unlawful and discriminatory because it fails to comply with the Final Regulations governing tobacco surcharges and wellness programs. To qualify for ERISA's safe harbor under § 1182(b)(2)(B), a wellness program must offer a clearly defined, reasonable alternative standard and ensure that all participants who satisfy it receive the full reward. Nordstrom's Plan fails to meet these requirements. It does not clearly offer an alternative standard at least once during the Plan year that provides the "full reward" and it fails to provide required disclosures and notice of an alternative standard in all Plan materials discussing the premium differential.

36. To start, Nordstrom's wellness program violates ERISA and its implementing regulations by failing to provide participants with the "full reward" required under 29 C.F.R. § 2590.702(f)(v)(iv). Specifically, Nordstrom's wellness program imposes a tobacco surcharge without providing retroactive reimbursement to participants who satisfy the alternative standard. While there is a smoking cessation program, it does not provide the "full reward" (i.e., avoiding the surcharge for the entire Plan year).

37. A 2025 Benefits Guide states: "There is a surcharge of $20 twice monthly if you or your spouse/ registered domestic partner are eligible and enroll for a Nordstrom medical plan and use tobacco products . . . . To remove the Tobacco Use Surcharge, tobacco users must become tobacco free or enroll in an approved tobacco cessation program (at no cost)." Because enrollment in the program only removes the surcharge ***prospectively***, and there is no provision for retroactive reimbursement, regardless of when participants enroll in the program, the wellness program fails to comply with ERISA's requirement to provide the "full reward" to all similarly situated individuals. By failing to provide retroactive reimbursements, Defendant denies participants the "full reward," rendering the wellness program discriminatory and noncompliant with ERISA's regulatory framework.

38. Nordstrom further violates ERISA's wellness-program requirements by imposing its tobacco surcharge at the *family-coverage level*, without regard to whether the *employee* uses tobacco. Under this policy, an employee enrolling in family coverage could be penalized, even if only a spouse or adult child uses tobacco—by being forced to pay the full surcharge on behalf of the entire family. This practice runs afoul of ERISA's anti-discrimination provisions, which prohibits group health plans from conditioning benefits or imposing penalties based on the health

status of a participant or their dependents.[6] By charging non-smoking employees extra solely because their dependents smoke, Nordstrom is effectively penalizing employees for the behavior of others, making the surcharge arbitrary, discriminatory, and untethered to any legitimate wellness aim. Nordstrom should not have imposed a surcharge that penalizes non-smoking participants for the choices of their family members.

39. Nordstrom also failed to provide the required notice to participants. As discussed, ERISA's implementing regulations require employers to clearly communicate the availability of a reasonable alternative standard to participants in all plan materials discussing premium differentials, including the plan document and SPD. Defendant failed to meet these notification requirements.

40. While the 2025 Benefit Guide mentions the tobacco surcharge and a smoking cessation program, it failed to provide contact information for enrolling in the smoking cessation program. Further, the Benefit Guide fails to provide information on a *reasonable* alternative that would enable participants to avoid the surcharge for the entire year, violating the notice requirements. Also, while the 2025 version mentions how participants' physicians' recommendations will be accommodated, as required by ERISA's wellness program regulations, the Benefit Guides from prior years omit this information entirely. Those materials fail to mention any alternative standard or that participants' physicians' recommendations will be accommodated.

---

[6] *See* 29 C.F.R. § 2590.702(c)(1)(i) (A plan "may not require an individual, as a condition of enrollment or continued enrollment . . . to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual . . . based on any health factor that relates to the individual or a dependent of the individual."). Since the tobacco surcharge is applied to the entire family's coverage cost due to a single family member's tobacco use, the Plan violates this prohibition by increasing a participant's premium based on the health factor of another covered individual, rather than assessing the tobacco use of each insured member individually, effectively punishing non-smokers for the tobacco use of other participants.

These deficiencies deprived participants of the information necessary to fully understand and exercise their rights. Upon information and belief, Defendant has provided participants with other communications discussing the tobacco surcharge and cessation program that do not address participants' rights to a compliant alternative standard that would allow them to avoid the surcharges for the entire Plan year or the statement regarding a participant's physician's recommendations being accommodated. Without this disclosure, participants are unaware of their rights under ERISA and cannot access alternative means to avoid the surcharge.

41. Had Defendant provided participants with adequate notice of the availability of a reasonable alternative standard, including clear instructions and contact information in all plan materials referencing the surcharge as well as a notice of participants' rights to have their personal physician's recommendations accommodated, Plaintiffs and similarly situated individuals could have taken steps to avoid or reduce the unlawful tobacco surcharge. Defendant's failure to provide this required notice deprived participants of the opportunity to exercise their rights under ERISA and directly contributed to the financial harm suffered by the Class.

42. By failing to meet the regulatory requirements, Nordstrom's tobacco surcharge is discriminatory, and in clear violation of ERISA and its implementing regulations.

43. Additionally, Plaintiff Pinckney, acting on behalf of himself and similarly situated participants, duly submitted a written request to Nordstrom's Plan administrator seeking copies of the SPD, underlying Plan document, and other materials governing the wellness and tobacco surcharge provisions. Under ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), the administrator was required to respond and provide the requested documents within 30 days. However, several months have elapsed since Plaintiff Pinckney's request, yet Nordstrom has not produced any of the requested documents. As a direct result of Nordstrom's failure to comply, Pinckney has been

prevented from fully understanding and asserting his rights under ERISA and is otherwise prejudiced in evaluating the legality of the tobacco surcharge program. Nordstrom's refusal or failure to provide the requested documents within the required timeframe constitutes a separate and independent violation of ERISA § 502(c), entitling Plaintiff to statutory penalties and attorneys' fees, in addition to relief on the merits of the surcharge claims.

44. Allowing corporate entities like Nordstrom to exploit their participants and unlawfully extract millions from them under the guise of a wellness program that is, in reality, a cash grab, directly contradicts ERISA's purpose of protecting workers from health-based discrimination. If unchecked, this practice would permit employers to manipulate wellness programs to deter participation and to disguise discriminatory revenue-generating schemes as health initiatives, shifting unjust financial burdens onto employees in violation of federal law.

III. DEFENDANT'S SELF-DEALING AND MISMANAGEMENT OF PLAN FUNDS

45. Defendant controls the administration of the tobacco surcharge, determining which participants are charged and withholding the surcharge amounts directly from participants' paychecks. These amounts are not placed in a trust account for the Plan but are instead deposited into Nordstrom's general accounts.

46. By retaining these funds, Nordstrom earns interest on the withheld surcharges and reduces its own financial contributions to the Plan. This practice constitutes self-dealing and violates ERISA's fiduciary duty requirements, which mandate that Plan assets be managed exclusively in the interest of participants and beneficiaries.

47. Defendant has fiduciary responsibilities to ensure that these funds are used to support coverage for participants' health insurance. Instead, by charging and collecting this unlawful surcharge, Defendant increased its own bottom line allowing it realize financial benefits

it would not have otherwise realized without imposing these surcharges, in violation of ERISA's fiduciary duty standards. Nordstrom's surcharge scheme allowed it to retain and earn interest on millions in employee-paid tobacco fees instead of using these funds to offset costs, such as subsidizing non-smoking participants, or funneling them back into the plan. That interest accrual directly benefited Nordstrom's bottom line, while depriving the Plan and its participants of valuable funds. In sum, these practices demonstrate that Defendant's wellness program is an unreasonable, revenue-generating scheme disguised as a health initiative, directly contravening ERISA's requirements and purpose.

CLASS DEFINITION AND ALLEGATIONS

48. Plaintiffs bring this action individually and on behalf of all other similarly situated individuals, pursuant to Rule 23(b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

49. Plaintiffs propose the following Class definitions, subject to amendment as appropriate:

> **Tobacco Surcharge Class**
> All individuals residing in the U.S. who, from 2014 to the time of judgment, paid a tobacco surcharge in connection with their participation in a health or welfare plan offered by Defendant.

50. Excluded from the Class are Nordstrom's officers and directors, and judicial officers and their immediate family members and associated court staff assigned to this case.

51. Plaintiffs reserve the right to modify or amend the definitions of the proposed Class before the Court determines whether certification is appropriate.

52. The proposed Class meets the criteria for certification under Fed. R. Civ. P. 23(a), (b)(1), (b)(2), and (b)(3).

53. **Numerosity**. This action is appropriately suited for a class action. The members of the Class are so numerous that the joinder of all members is impracticable. Plaintiffs are informed, believe, and thereon allege, that the proposed Class contains thousands of participants who have been damaged by Defendant's conduct as alleged herein, the identity of whom is within the knowledge of Defendant and can be easily determined through Defendant's records.

54. **Commonality**. This action involves questions of law and fact common to the Class. The common legal and factual questions include, but are not limited to, the following:

a. Whether Defendant's tobacco surcharge discriminates against participants based on a health status related factor;

b. Whether Defendant offers a reasonable alternative standard by which a participant could receive the "full reward" of the tobacco surcharge;

c. Whether Defendant provided the proper notices of an alternative standard in all the plan materials describing the surcharge;

d. Whether Defendant's tobacco surcharge program violates ERISA and the applicable regulations;

e. Whether Defendant breached its fiduciary duties by collecting and retaining the tobacco surcharge;

f. Whether Defendant breached its fiduciary duties by failing to periodically review the terms of its surcharge program to ensure compliance with ERISA and applicable regulations; and

g. The appropriate mechanisms to determine damages on a class-wide basis.

55. **Typicality**. Plaintiffs' claims are typical of the claims of the members of the Class, because, *inter alia*, all Class members have been injured through the uniform misconduct described above and were charged improper and unlawful tobacco surcharge and retaliated against for not choosing an off-duty smoke free lifestyle. Moreover, Plaintiffs' claims are typical of the Class members' claims because Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class. In addition, Plaintiffs are entitled to relief under the same causes of action and upon the same facts as the other members of the proposed Class.

56. **Adequacy of Representation**. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs and members of the Class each participated in health and welfare plans offered by Defendant and were harmed by Defendant's misconduct in that they were assessed unfair and discriminatory tobacco surcharges. Plaintiffs will fairly and adequately represent and protect the interests of the Class and has retained competent counsel experienced in complex litigation and class action litigation. Plaintiffs have no interests antagonistic to those of the Class, and Defendant have no defenses unique to Plaintiffs.

57. **Superiority**. A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would be virtually impossible for a member of the Class, on an individual basis, to obtain effective redress for the wrongs done to him or her. Further, even if the Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no management difficulties under the circumstances here.

58. Plaintiffs seek injunctive, declaratory, and equitable relief on grounds generally applicable to the Class. Unless the Class is certified, Defendant will be allowed to profit from its unfair and discriminatory practices, while Plaintiffs and the members of the Class will have

suffered damages. Unless Class-wide injunctions are issued, Defendant may continue to benefit from the violations alleged, and the members of the Class will continue to be unfairly treated.

CAUSES OF ACTION

COUNT I
VIOLATION OF ERISA'S "FULL REWARD" RULE
(Violation of 29 U.S.C. § 1182 & 42 U.S.C. § 300gg-4)

59. Plaintiffs re-allege and incorporate herein by reference allegations in paragraphs 1–58 of this Complaint.

60. Defendant unlawfully imposes a tobacco surcharge on all participants who use tobacco in violation of ERISA § 702. By imposing surcharges of $40 monthly on participants who use tobacco, without complying with the regulatory requirements, Defendant is violating ERISA § 702(b), 29 U.S.C. § 1182(b)(1). This discrimination stems from Defendant's decision not to provide a compliant alternative standard that makes available the "full reward" to all participants who use nicotine, in violation of ERISA and the Final Regulations.

61. ERISA explicitly prohibits group health plans from requiring "any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor." *See* 29 U.S.C. § 1182(b). Defendant violates this prohibition because it imposes a surcharge on nicotine users without offering a compliant wellness program that ensures that anyone who satisfies the alternative standard is provided with the "full reward." Defendant's program offers only *prospective* relief, reducing premiums going forward for those who enroll, rather than reimbursing participants for surcharges they have already paid. As a result, Defendant's tobacco surcharge program fails to satisfy nearly all the regulatory requirements to qualify for the statutory safe-harbor.

62. Because Defendant's program fails to comply with the fourth criteria, the full reward rule, Nordstrom's wellness program is not a "program[] of health promotion and disease prevention," rather, it is a subterfuge for discrimination, making the tobacco surcharge discrimination in violation ERISA § 702 and PHSA § 2705.

63. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: (A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan. *See* 29 U.S.C. § 1182(b). Plaintiffs and Class Members are entitled to relief under ERISA § 502(a)(3).

64. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available and appropriate remedies to redress Defendant's violations of ERISA's anti-discrimination provisions outlined in § 1182(b) and § 300gg-4, including but not limited to injunctive relief, restitution, and any other relief necessary to remedy Defendant's unlawful conduct, as set forth in the Prayer for Relief.

<u>COUNT II</u>
FAILURE TO PROVIDE REQUIRED NOTICE AND DISCLOSURES
(Violation of 29 U.S.C. § 1182)

65. Plaintiffs re-allege and incorporate herein by reference allegations in paragraphs 1–58 of this Complaint.

66. Defendant unlawfully imposes a tobacco surcharge on all participants who use tobacco in violation of ERISA § 702. By imposing surcharges of $40 monthly on participants who use tobacco, without complying with the regulatory requirements, Defendant is violating ERISA § 702(b), 29 U.S.C. § 1182(b)(1). This discrimination stems from Defendant's decision not to provide a compliant alternative standard that properly notifies participants of a compliant

alternative standard and failed to provide the required disclosures under ERISA and the Final Regulations.

67. Under ERISA and the Final Regulations, employers must "disclose the availability of a reasonable alternative standard to qualify for the reward … in all plan materials describing the terms of a health-contingent wellness program (both activity-only and outcome-based wellness programs)." Final Regulations, 33166. "[A] plan disclosure that references a premium differential based on tobacco use … is a disclosure describing the terms of a health-contingent wellness program and, therefore, must include this disclosure." The notice must include "the availability of a reasonable alternative standard to qualify for the reward … including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated." Defendant failed to notify participants of an alternative standard in the Benefit Guides prior to 2025. While these Benefit Guides mentioned the premium differential (i.e., the $20 twice monthly surcharge), it failed to notify participants of an alternative standard to avoid that surcharge.

68. Further, Nordstrom failed to provide the mandated disclosures in these Benefit Guides. While Nordstrom updated the language in its 2025 Benefit Guide to include a reference to the smoking cessation program and the disclosure regarding participants' physicians' recommendations being accommodated, it failed to provide the contact information to access the alternative standard. Prior Benefit Guides omitted both reference to the alternative standard and the disclosure regarding participants' physicians' recommendations being accommodated. provide contact information for accessing , summary plan descriptions, or notices of material modification. Specifically, Nordstrom never described the alternative standard for avoiding the tobacco surcharge, the steps necessary to qualify for the full reward, or the deadlines for enrollment and

completion. Nor did Nordstrom issue any SPD or material-change summary reflecting the addition of its tobacco-surcharge program.

69. Because Plaintiffs and Class Members were never informed of an alternative standard or how to satisfy that standard or who to contact to enroll, they lacked the requisite notice to avoid the surcharge. This omission deprived participants of any real opportunity to qualify for the "full reward." As a direct result, Plaintiffs and Class Members incurred avoidable financial penalties and suffered economic prejudice traceable solely to Defendant's failure to provide the mandated disclosures.

70. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: (A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan. *See* 29 U.S.C. § 1182(b). Plaintiffs and Class Members are entitled to relief under ERISA § 502(a)(3).

71. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available and appropriate remedies to redress Defendant's violations of ERISA's anti-discrimination provisions outlined in § 1182(b) and § 300gg-4, including but not limited to injunctive relief, restitution, and any other relief necessary to remedy Defendant's unlawful conduct, as set forth in the Prayer for Relief.

COUNT III
BREACH OF FIDUCIARY DUTY
(Violation of ERISA §§ 404 and 406, 29 U.S.C. §§ 1104 and 1106)

72. Plaintiffs re-allege and incorporate herein by reference allegations in paragraphs 1–58 of this Complaint.

73. ERISA requires a fiduciary to act "solely in the interest of participants," to do so with "the care, skill, prudence, and diligence" of a prudent person, "in accordance with the documents and instruments governing the plan," and to refrain from "deal[ing] with the assets of the plan" in the fiduciary's own interest. 29 U.S.C. §§ 1104(a)(1); 1106(b)(1). These duties of loyalty and prudence are the "highest known to the law" and require fiduciaries to have "an eye single to the interests of the participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

74. Instead of loyally and prudently acting in the best interests of Plan participants, Defendant chose to use Plan assets to exclusively benefit itself, to the detriment of the Plan and its participants, by unlawfully withholding millions of dollars in tobacco surcharges from participants' paychecks and using these funds to offset its own obligations to contribute to the Plan.

75. Each year, Defendant administered the Plan within the meaning of 29 U.S.C. § 1002(16) and was a fiduciary within the meaning of 29 U.S.C. § 1002(21), in that it exercised discretionary authority and discretionary control respecting the management of the Plan and its surcharge programs, including the decision not to offer a reasonable alternative standard. Each year, Defendant exercised discretionary authority with respect to the administration and implementation of the unlawful surcharge program by administering a wellness program without providing reasonable alternatives that allowed "all similarly situated individuals" to avoid the surcharge for the entire plan year, dictated the eligibility criteria and penalties for noncompliance, and failed to provide participants with the necessary notices.

76. Nordstrom controlled and disseminated to all employees the contents of the Benefits Guides describing the tobacco surcharge but failed to notify participants of a reasonable

alternative standard by which they could avoid the entire year of surcharges regardless of when they satisfied the alternative standard in violation of the regulations. Further, Nordstrom failed to adequately and regularly review the terms of its tobacco wellness program and the accompanying communications to participants to ensure they complied with ERISA and the regulations. Year after year, Defendant failed to properly institute safeguards against administering a program that violated the statute and implementing regulations. These actions reflect Nordstrom's active role in administering a non-compliant "program[] of health promotion and disease prevention," resulting in an unlawful and discriminatory tobacco surcharge in violation of ERISA.

77. Nordstrom also breached its fiduciary duties by administering a Plan that did not conform with ERISA's anti-discrimination requirements. Nordstrom acted disloyally by causing Plaintiffs and members of the Class to pay tobacco surcharges that were unlawful because they were associated with a non-compliant wellness program.

78. As a result of the imposition of the unlawful and discriminatory tobacco surcharges, Nordstrom enriched itself at the expense of the Plan, resulting in it receiving a windfall. Defendant breached its fiduciary duties by prioritizing its own financial interests over the interests of Plan participants by deducting from participants' paychecks the amounts of the surcharges without properly administering reimbursements to individuals who completed the wellness program in the second half of the Plan year. By administering the wellness program in a manner that precluded "all similarly situated individuals" from obtaining the "full reward," and by failing to adequately disclose participants' rights under tobacco wellness program, Nordstrom administered a program that disproportionately benefited itself at the expense of Plan participants. This practice resulted in an unjust enrichment to Nordstrom at the expense of Plan participants, demonstrating a failure

to act solely in the interests of participants and beneficiaries, in violation of ERISA's duty of loyalty under 29 U.S.C. § 1104(a)(1)(A).

79. Further, by withholding unlawful tobacco surcharges from participants' paychecks and using those funds to reduce its own financial obligations to the Plan, Nordstrom caused the Plan to engage in transactions that constituted a direct or indirect exchange of Plan assets for the benefit of a party in interest—namely, itself—and improperly used Plan assets for its own financial advantage, in violation of 29 U.S.C. § 1106(a)(1). Nordstrom is a party in interest, as that term is defined under 29 U.S.C. § 1002(14), because it is both a Plan fiduciary and the employer of Plan participants.

80. By retaining the amounts of the tobacco surcharges, Nordstrom increased its own monies and saved the money it would have had to contribute to the Plan. In doing so, it dealt with Plan assets for its own benefit, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1), which prohibits fiduciaries from engaging in self-dealing and using plan assets for their own benefit. By retaining the surcharges without providing participants with the "full reward" to which they are entitled, Nordstrom improperly benefitted from its own wellness programs at the expense of Plan participants.

81. Defendant breached its fiduciary duties by: failing to properly disclose material information about the wellness programs to participants, thereby misleading or depriving them of the ability to make informed decision; administering a wellness program that does not conform with ERISA's anti-discrimination provisions, in violation of ERISA § 404, 29 U.S.C. § 1104(a)(1)(D); acting on behalf of a party whose interests were averse to the interests of the Plan and the interests of its participants (and their beneficiaries), in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(2); and by failing to act prudently and diligently to review the terms of the

wellness programs (and the Plan) and Plan communications to ensure they properly complied with the regulatory requirements in violation of 29 U.S.C. § 1104(a)(1)(B). These breaches caused Plaintiffs and the Class to incur unlawful and discriminatory surcharges. Had Defendant conformed with their fiduciary duties under ERISA, they would not have administered a non-compliant wellness program and/or would have reviewed the terms of the Plan and the wellness program regularly to ensure they complied with ERISA's anti-discrimination provisions and would have updated the Plan and/or wellness program and associated communications to comply with the law.

82. As a direct and proximate result of these fiduciary breaches, members of the Class lost millions of dollars in the form of unlawful surcharges that were deducted from their paychecks.

83. Plaintiffs are authorized to bring this action on a representative basis on behalf of the Plan pursuant to 29 U.S.C. § 1132(a)(2). Pursuant to 29 U.S.C. § 1109, Defendant is liable to: make good to the Plan all losses resulting from its breaches, including but not limited to any and all equitable and remedial relief as is proper, disgorge all unjust enrichment and ill-gotten profits, and to restore to the Plan or a constructive trust all profits acquired through its violations, as alleged herein.

COUNT IV

FAILURE TO PROVIDE PLAN DOCUMENTS UPON REQUEST (Violation of ERISA §§ 104(b)(4) & 502(c))

84. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1–58 of this Complaint.

85. On March 24, 2025, Nordstrom received a written request from Plaintiffs Pinckney and Ferguson requesting that Nordstrom's Plan administrator furnish copies of the SPD and the

benefit guides during the last 3 years of their employment, along with "any other materials detailing to employees the benefits available under the health and welfare plan."

86. ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), requires a plan administrator to furnish such documents within 30 days of a proper written request.

87. More than several months have elapsed since Plaintiffs' requests, yet Nordstrom has failed to produce any of the requested materials.

88. By refusing or neglecting to provide the SPD and underlying Plan documents within the statutorily mandated timeframe, Nordstrom has violated ERISA § 104(b)(4).

89. ERISA § 502(c), 29 U.S.C. § 1132(c), authorizes the imposition of statutory penalties, up to $100 per day, for each day the requested documents remain unproduced, as well as the award of reasonable attorneys' fees and costs.

90. As a direct result of this violation, Plaintiffs Pinckney and Ferguson have been impeded in their ability to understand and enforce their rights under ERISA, and are entitled to statutory penalties, attorneys' fees, and such other relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendant on all claims and request that the Court awards the following relief:

A. An Order certifying this action as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as Class representatives for the Class, and appointing the undersigned to act as Class Counsel;

B. A declaratory judgment that the unlawful and discriminatory tobacco surcharges imposed on participants violate ERISA's anti-discrimination provisions set forth in ERISA § 702, 29 U.S.C. § 1182;

C. An Order instructing Defendant to reimburse all persons who paid the unlawful and discriminatory surcharges;

D. A declaratory judgment that Defendant breached their fiduciary duties in violation of ERISA § 404, 29 U.S.C. § 1104 for, *inter alia*, instituting a surcharge on participants without offering a reasonable alternative standard in violation of ERISA's anti-discrimination provisions and for failing to adequately monitor the terms of the Plan and wellness program, as well as communications with participants, to ensure they complied with ERISA and the applicable regulations;

E. An Order requiring Defendant to provide an accounting of all prior payments of the surcharges under the Plan;

F. Declaratory and injunctive relief as necessary and appropriate, including enjoining Defendant from further violating the duties, responsibilities, and obligations imposed on it by ERISA with respect to the Plan and ordering Defendant to remit all previously collected surcharges;

G. Disgorgement of any benefits or profits Defendant received or enjoyed due to the violations of ERISA § 702, 29 U.S.C. § 1182(b);

H. Restitution of all surcharge amounts Defendant collected;

I. Surcharge from Defendant totaling the amounts owed to participants and/or the amount of unjust enrichment obtained by Defendant as a result of its collection of the unlawful and discriminatory tobacco surcharges;

J. Relief to the Plan from Defendant for its violations of ERISA § 404, 29 U.S.C. § 1104, under 29 U.S.C. § 1109, including a declaration that the tobacco surcharges are unlawful; restoration of losses to the Plan and its participants caused by Defendant's fiduciary violations; disgorgement of any benefits and profits Defendant received or enjoyed from the use of the Plan's assets or violations of ERISA; surcharge; payment to the Plan of the amounts owed to members who paid the surcharges; removal and replacement of the Plan's fiduciaries, and all appropriate injunctive relief, such as an Order requiring Defendant to stop imposing the unlawful and discriminatory surcharges on participants in the future.

K. An award of pre-judgment interest on any amounts awarded to Plaintiffs and the Class pursuant to law;

L. An award of Plaintiffs' attorneys' fees, expenses, and/or taxable costs, as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine; and

M. Any other relief the Court determines is just and proper.

Dated: July 24, 2025 Respectfully submitted,

By: *<u>/s/ David B. Richardson</u>*

David B. Richardson
LAW OFFICES OF DAVID B. RICHARDSON, P.S.
3829 S. Edmunds St., Suite C.
Seattle, WA 98118
Email: david@dbrlaw.com
425-646-9801

SIRI & GLIMSTAD LLP
Oren Faircloth (*pro hac vice* forthcoming)
745 Fifth Avenue, Suite 500
New York, New York 10151
Tel: (212) 532-1091
E: ofaircloth@sirillp.com

Attorneys for Plaintiffs and the Proposed Class