

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

MICHELLE MCGEE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NORDSTROM INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Michelle McGee, individually and on behalf of all others similarly situated as set forth herein, alleges as follows:

NATURE OF THE ACTION

1. This is a class action on behalf of persons in the State of Arizona that opened emails sent to them by Nordstrom Inc. (“Defendant” or “Nordstrom”) for Defendant’s violations of Arizona’s Telephone, Utility and Communication Service Records Act, A.R.S. § 44-1376 *et seq.*

2. Defendant is one of the largest luxury retailers in the United States. To maximize sales, Defendant solicits customers to sign up for its email list.

3. Plaintiff and Class members are subscribers to Defendant’s email list.

4. Defendant embeds trackers within its emails. These trackers record whether and when subscribers open and read their messages. Defendant never received subscribers’ consent to collect this information.

1 5. By failing to receive consent from Plaintiff and Class members, Defendant is
2 violating Arizona's Telephone, Utility and Communication Service Records Act, a statute that
3 prohibits procuring or attempting to procure the communication service records of email recipients
4 without their authorization.

5 **THE PARTIES**

6 6. Plaintiff Michelle McGee is a citizen of Arizona, residing in Suprise, Arizona.
7 Within the past two years, Plaintiff has received promotional emails from Defendant.

8 7. Plaintiff has frequently received and opened emails from Defendant to review
9 promotional materials. Plaintiff most recently opened one of Defendant's emails in September
10 2023.

11 8. Each time Plaintiff opened an email from Defendant, Defendant procured
12 information identifying her and disclosing when she opened and read the email through the email
13 tracking software embedded in the emails.

14 9. Defendant never received consent from Plaintiff to procure her private email
15 records.

16 10. Defendant Nordstrom, Inc. is a Washington corporation with its principal place of
17 business in Seattle, Washington.

18 **JURISDICTION AND VENUE**

19 11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
20 amended by the Class Action Fairness Act of 2005 ("CAFA"), because this case is a class action
21 where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00,
22 exclusive of interest and costs, and there are over 100 members of the putative class, and Plaintiffs,
23 as well as most members of the proposed class, are citizens of different states than Defendant.

24 12. The Court has personal jurisdiction over Defendant because Defendant is domiciled
25 in the State of Washington.

26 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
27 resides in this District.

FACTS SUPPORTING PLAINTIFF'S CLAIM

A. The HP Spying Scandal and A.R.S. § 44-1376

14. In 2001, Hewlett-Packard “embark[ed] on one of the largest and most difficult mergers in American business history.”¹ Spearheaded by then-CEO Carly Fiorina, HP sought to acquire a rival company, Compaq, Inc., in a deal valued at \$25 billion.²

15. “Widely considered one of the worst tech mergers in history,”³ the economic fallout from the acquisition began immediately.⁴ By 2004, “Hewlett-Packard’s stock had dropped below seventeen dollars, from a high of more than sixty dollars, in 2000.”⁵ Industry insiders took note, with a “consensus” believing that “the new HP, the tech industry’s most sprawling conglomerate, ha[d] lost its focus and [was] being squeezed between two formidable rivals with much clearer business models, Dell and IBM.”⁶

16. In January 2005, a few days before HP’s annual retreat, two board members, Patricia Dunn and George Keyworth, met with Fiorina to discuss their concerns about the company’s direction.⁷ Fiorina sought to placate Dunn and Keyworth, “agree[ing] to tear up her agenda for the board’s strategy retreat ... and focus instead on the directors’ concerns.”⁸ But shortly after the retreat, “a reporter for the *Wall Street Journal*, Pui-Wing Tam, called to confirm details that Tam had learned about the retreat, including assertions that Fiorina had lost the confidence of the board and that operating responsibilities would soon be shifted away from her.”⁹ “Clearly, someone at

¹ Michael Malone, *The H-P-Compaq Mess Isn’t All Carly’s Doing*, WALL ST. J. (May 21, 2002), <https://www.wsj.com/articles/SB1021933260918245440>.

² Andrew Ross Sorkin, *Hewlett-Packard in Deal to Buy Compaq for \$25 Billion in Stock*, N.Y. TIMES (Sept. 4, 2001), <https://www.nytimes.com/2001/09/04/business/hewlett-packard-in-deal-to-buy-compaq-for-25-billion-in-stock.html>.

³ PCMag Staff, *The Biggest Tech Mergers and Acquisitions of All Time*, PCMAG (Apr. 12, 2021), <https://www.pcmag.com/news/the-biggest-tech-mergers-and-acquisitions-of-all-time>.

⁴ Mike Musgrove, *HP Posts \$2 Billion Loss in First Full Quarter with Compaq*, WASH. POST (Aug. 28, 2002), <https://www.washingtonpost.com/archive/business/2002/08/28/hp-posts-2-billion-loss-in-first-full-quarter-with-compaq/2486859a-b55c-4247-9f0a-cb1d839b68d8/>.

⁵ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007), <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

⁶ The Economist Staff, *Losing the HP way*, THE ECONOMIST (Aug. 19, 2004), <https://www.economist.com/business/2004/08/19/losing-the-hp-way>.

⁷ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007), <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

⁸ Alan Murray, *H-P Board Clash Over Leaks Triggers Angry Resignation*, WALL ST. J. (Sept. 6, 2006), <https://www.wsj.com/articles/SB115749453036454340>.

⁹ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007), <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

1 the retreat, which was attended only by board members and top executives, had leaked proprietary
2 information.”¹⁰

3 17. Fiorina responded with fury. After “call[ing] the board members together on the
4 phone,” Fiorina “dressed them down for giving details of the meeting.”¹¹ But that response only
5 further inflamed tensions between Fiorina and the board, and less than two weeks after the retreat,
6 the board met again, this time without Fiorina, and voted to dismiss her.¹²

7 18. Despite Fiorina’s departure, board members remained perturbed by the disclosures
8 to the press, and so when elevating Patricia Dunn to nonexecutive chairwoman and tasking her with
9 choosing Fiorina’s successor, the board also provided Dunn with another mandate: “stop the board
10 leaks.”¹³

11 19. Dunn promptly initiated an investigation, code-naming it “Project Kona.”¹⁴ But
12 before Project Kona could get off the ground, another, more damaging leak came to light.¹⁵ In the
13 months after Fiorina’s removal, Dunn selected Mike Hurd, a CEO at a competitor company, to
14 serve as HP’s new CEO.¹⁶ But before the board could make an announcement, a reporter from
15 *Business Week* reached out, asking for comment on Hurd’s selection.¹⁷ Because Hurd had not yet
16 left the other company, revealing his candidacy before he resigned could potentially derail the
17 process.¹⁸ Although Hurd would go on to become HP’s CEO without issue, the new disclosure
18 added urgency to determining who was behind the leaks.¹⁹ For Dunn, Project Kona was the way
19 to find out.²⁰

20 20. To staff Project Kona, Dunn turned to a security manager at HP, Kevin Huska, who,
21 in turn, “referred Dunn to an outside investigator named Ronald R. DeLia, whose firm, Security

22 ¹⁰ *Id.*

23 ¹¹ Alan Murray, H-P Board Clash Over Leaks Triggers Angry Resignation, WALL ST. J. (Sept. 6, 2006),
<https://www.wsj.com/articles/SB115749453036454340>.

24 ¹² *Id.*

25 ¹³ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

26 ¹⁴ *Id.*

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

1 Outsourcing Solutions, based in Boston, had been under contract to Hewlett-Packard for some ten
 2 years.”²¹ Throughout the summer of 2005, Dunn received regular updates from DeLia, including
 3 one call where he “revealed that his investigators had obtained private phone records of
 4 reporters.”²² DeLia received these records through “pretexting,” which, in his own words,
 5 “involved investigators requesting information from [telephone] operators orally, over the phone,
 6 pretending to be someone else if necessary.”²³ Notwithstanding this invasion of privacy, Project
 7 Kona failed to pinpoint a leaker, and as the year winded down, so too did the investigation.²⁴

8 21. Then, in January 2006, a reporter from CNET, Dawn Kawamoto, published an
 9 “inside account of the company’s retreat, held two weeks earlier.”²⁵ The substance of the article
 10 was innocuous, but at HP, “the story was met with alarm.”²⁶ In response to the leak, “[a] new
 11 investigation was immediately launched, which Dunn called Kona II.”²⁷ HP’s general counsel,
 12 Ann Baskins, “asked an employment lawyer at the company, Kevin Hunsaker, to head the renewed
 13 investigation.”²⁸ “With Hunsaker in day-to-day charge, the investigators undertook their mission
 14 with extraordinary zeal,” pretexting phone companies to obtain records for reporters, directors, and
 15 employees.²⁹

16 22. In addition to pretexting, the investigators also took a new approach.³⁰ Posing as a
 17 disgruntled employee, they emailed Kawamoto with the promise of revealing damaging
 18 information about the company.³¹ Unbeknownst to Kawamoto, the investigators utilized
 19 “ReadNotify,” a tracker that, once embedded into an email, allowed them to “track the path [the]
 20 message takes, including whether [the] recipient opens the message.”³² “[A] technique also
 21

22 ²¹ *Id.*

23 ²² *Id.*

24 ²³ *Id.*

25 ²⁴ *Id.*

26 ²⁵ *Id.*

27 ²⁶ *Id.*

28 ²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Robert McMillan, *HP’s e-mail tracer in widespread use*, COMPUTERWORLD (Oct. 10, 2006),

<https://www.computerworld.com/article/2820287/hp-s-e-mail-tracer-in-widespread-use.html>

1 employed by some e-mail marketers,”³³ the investigators hoped that Kawamoto would “forward
2 the e-mail to her source,” thereby revealing who had leaked the confidential information.³⁴

3 23. ReadNotify failed to yield results, with Kawamoto declining to forward the email.³⁵
4 But this time around, after combing through the phone records, investigators discovered that a board
5 member, George Keyworth, had a short conversation with Kawamoto right before the article was
6 published.³⁶ After the revelation, the board confronted Keyworth, who admitted to having lunch
7 with the reporter and “say[ing] some nice things about Mike Hurd.”³⁷ The board responded by
8 voting on a motion to request Keyworth’s resignation.³⁸ After the motion passed, a board member
9 who dissented, Mark Perkins, quit in protest.³⁹ Keyworth, for his part, refused to step aside, “saying
10 the shareholders had elected him, and he felt the punishment was out of proportion to the offense.”⁴⁰

11 24. Perkins did not go quietly.⁴¹ After resigning from the board, Perkins retained a
12 lawyer, Viet Denh, who “contacted the S.E.C., the U.S. Attorney’s offices in Manhattan and San
13 Francisco, the California Attorney General, the F.C.C., and the F.T.C.”⁴²

14 25. Once HP’s tactics were made public, the reaction was swift and overwhelming. In
15 September 2006, Congress held a hearing on the scandal, asking Dunn and other witnesses to
16 answer two questions: “Exactly what did they know about the use of pretexting,” and “[w]hat did
17 they know about planting spyware on an email to a journalist.”⁴³ The witnesses verified that
18 investigators employed both methods to gather evidence, but they maintained that their conduct
19 was lawful.⁴⁴ Throughout the hearing, members of Congress called for a law that would prohibit
20

21 ³³ *Id.*

22 ³⁴ Joris Evers, *How HP bugged e-mail*, CNET (Sept. 29, 2006),
<https://www.cnet.com/news/privacy/how-hp-bugged-e-mail/>.

23 ³⁵ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

24 ³⁶ *Id.*

25 ³⁷ *Id.*

26 ³⁸ *Id.*

27 ³⁹ *Id.*

28 ⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Hewlett-Packard's Pretexting Scandal: Hearing Before the Subcomm. on Oversight and Investigations of the H.
Comm. on Energy and Commerce, 109th Cong. 45 (2006), <https://www.govinfo.gov/content/pkg/CHRG-109hhr31472/html/CHRG-109hhr31472.htm>.

⁴⁴ *Id.*

1 these practices, with one member remarking that “[t]he growing market for personal information is
 2 enormous, and many of us have seen this, and that is why we need to pass legislation to stop this.”⁴⁵
 3 When another member asked Dunn whether it “strike[s] you as a permissible tactic to use, attaching
 4 a tracking device onto an e-mail,” Dunn replied, “[i]t is kind of surprising that it is legal, isn’t it?”⁴⁶
 5 Still another member lamented that email trackers were “equivalent to going through the mail in my
 6 mailbox.”⁴⁷

7 26. Six days after the hearing, the California Attorney General indicted Dunn,
 8 Hunsaker, DeLia, and two private investigators involved in both iterations of Project Kona.⁴⁸ A
 9 few months after that, Congress passed the Telephone Records and Privacy Protection Act of 2006,
 10 a law that criminalizes “knowingly and intentionally obtain[ing], or attempt[ing] to obtain,
 11 confidential phone records information of a covered entity, by making false or fraudulent
 12 statements or representations to an employee of a covered entity.” 18 U.S.C. § 1039(a)(1). That
 13 law, as the text suggests, only prohibits pretexting, not the use of email trackers.

14 27. After Congress enacted the TRPA, the Arizona legislature went a step further,
 15 passing a law that addressed *both* methods used by HP’s investigators. Like the federal law, this
 16 new Arizona law prohibits any person from procuring or conspiring with another to procure “a
 17 telephone record” of residents without consent. But, in addition, the new law also prohibits
 18 procurement of any “communication service record” (including email records) of “any resident of
 19 this state without the authorization of the customer to whom the record pertains, or by fraudulent,
 20 deceptive, or false means.” Ariz. Rev. Stat. Ann. § 44-1376.01. And while Congress declined to
 21 include a private right of action in the federal law, the Arizona legislature allowed residents to
 22 pursue civil remedies. Ariz. Rev. Stat. Ann. § 44-1376.04(2).

23 **B. Email Pixels**

24 28. Not much has changed between 2008 and today. Despite Arizona law prohibiting
 25 the practice, companies still embed trackers within emails without first obtaining consumers’

26 ⁴⁵ *Id.*

27 ⁴⁶ *Id.*

⁴⁷ *Id.*

28 ⁴⁸ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),

<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

CLASS ACTION COMPLAINT - 7

CASE NO.

1 consent. Indeed, “[a] 2018 Princeton study on email tracking tested over 12,000 emails from 900
2 senders offering mailing list subscriptions and found that 70% contained trackers.”⁴⁹

3 29. These trackers, known as “spy pixels,” enable companies to learn information about
4 the email transfer, including when and where the email was opened.

5 30. A spy pixel is typically a 1x1 (one pixel high by one pixel long) image. “The spy
6 pixel is so small it is basically impossible to see with the naked eye.”⁵⁰

7 31. To activate a spy pixel, recipients need only to open the email.

8 **C. Defendant’s Spy Pixel Tracking**

9 32. Defendant uses Everest, an email tracking system offered by Validity, a popular
10 email marketing services company.⁵¹ This can be seen in a snippet of the HTML code in one of
11 Defendant’s emails.

```
12 
```

16 33. “Validity Everest is the email deliverability platform that provides crucial insights
17 and guidance so you can reach more people, increase engagement, and protect your email
18 performance.”⁵²

19 34. With Everest, Defendant can “[u]nderstand the time of day your emails are
20 opened, what devices they are opened on, and how long people are looking at them.”⁵³ Everest
21 also gives Defendant the ability to “[f]ilter [their] engagement data by mailbox provider,
22 platform, location, and more to understand high- and low-performing segments.”⁵⁴

23
24 ⁴⁹ Mikael Berner, *The Business of Email Tracking: What To Know About Spy Pixels In Your Inbox*, FORBES (Jun 9,
25 2022), <https://www.forbes.com/sites/forbestechcouncil/2022/06/09/the-business-of-email-tracking-what-to-know-about-spy-pixels-in-your-inbox/?sh=2084ee793fec>.

26 ⁵⁰ Becky Willeke, *Spy pixels are hiding in your emails; so what can you do about it?*, FOX 2 NOW (Mar. 15, 2021),
<https://fox2now.com/news/tech-talk/spy-pixels-are-hiding-in-your-emails-so-what-can-you-do-about-it/>.

27 ⁵¹ <https://www.validity.com/everest/>

⁵² <https://www.validity.com/everest/#more-messages>

⁵³ <https://www.validity.com/everest/engagement-analytics/>

28 ⁵⁴ *Id.*

1 35. According to Validity, Everest allows marketers to “[g]et a complete view of
2 [their] email performance to drive strategic decisions.”⁵⁵ This is done by procuring “engagement
3 data” and combining it into “a single interface” to “drill down into performance by mailbox
4 provider.”⁵⁶

5 36. Everest users create an “Everest tracking pixel” to capture “engagement data.”

6 37. “The Everest tracking pixel has the ability to record recipients or values associated
7 with those recipients, individual email campaigns, and additional custom properties via what are
8 commonly referred to as *merge tags* or *personalization tokens*.”⁵⁷

9 38. With a personalization token, a marketer can “collect engagement data” on
10 individual email recipients.⁵⁸

11 39. The “engagement data” Everest collects includes average read time of an email,
12 the amount of times an email was opened, unique opens per email address, whether an email was
13 printed, whether an email was forwarded, and how long the recipient looked at the email.⁵⁹

14 //

15 //

16 //

17

18

19

20

21

22

23

24

25

26 ⁵⁵ *Id.*

27 ⁵⁶ *Id.*

28 ⁵⁷ <https://knowledge.validity.com/hc/en-us/articles/360047692351-How-do-I-add-or-update-my-Everest-tracking-pixel->

⁵⁸ *Id.*

⁵⁹ <https://knowledge.validity.com/hc/en-us/articles/4403870401563-Everest-Engagement-Playbook-Beginner>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Engagement terminology ^

- **Recipients:** The number of subscribers receiving email with your tracking pixel.
- **Avg read time:** The average time taken to read your email in number of seconds across all recipients.
- **Opens collected:** The total number of unique opens excluding image proxies that inflate or distort open counts due to pre-fetching content.
- **Unique opens:** The total number of opens per unique email address.
- **Proxy opens:** The total number of proxy opens.
- **Print:** The total number of times a recipient printed an email.
- **Forward:** The total number of times a recipient forwarded an email.
- **Glanced:** The recipient took less than 2 seconds to read your email.
- **Skimmed:** The recipient took 2-7 seconds to read your email.
- **Read:** The recipient took 8 seconds or more to read your email.

40. Defendant uses Everest to procure all “engagement data” record information with its tracking pixel.

41. Defendant embeds a second tracking pixel that contains unique spy pixel URLs—personalization tokens—for each email it sends. This can be seen in a snippet of the HTML code in one of Defendant’s emails. This enables Defendant to track “engagement data” for every email recipient on an individual level.

```

```

42. Defendant embedded “Everest tracking pixels” in marketing emails Defendant sent to Plaintiff and Defendant utilized the tracking system provided by Everest to track the time and place of where the email was opened.

43. Plaintiff was unaware that tracking pixels were embedded in the emails. Defendant never received consent from Plaintiff and Class Members to use these spy pixels.

CLASS ACTION ALLEGATIONS

44. Plaintiff seeks to represent a class (the “Class”) defined as: All persons in the State of Arizona who have opened a marketing email containing a tracking pixel from Defendant.

1 45. Excluded from the Class are Defendant, its subsidiaries, affiliates, officers,
2 directors, assigns and successors, and any entity in which it has a controlling interest, and the Judge
3 to whom this case is assigned and any member of his or her immediate family.

4 46. Members of the Class are so numerous that their individual joinder herein is
5 impracticable. On information and belief, members of the Class number in the hundreds of
6 thousands. The precise number of Class members and their identities are unknown to Plaintiff at
7 this time but will be determined through discovery. Class members may be notified of the pendency
8 of this action by mail and/or publication through the distribution records of Defendant and third-
9 party retailers and vendors.

10 47. Common questions of law and fact exist as to all Class members and predominate
11 over questions affecting only individual Class members. Common legal and factual questions
12 include, but are not limited to:

- 13 a) whether Defendant “[k]nowingly procure[d], attempt[ed] to procure, solicit[ed] or
14 conspire[d] with another to procure a ... communication service record of any
15 resident of this state without the authorization of the customer to whom the record
16 pertains or by fraudulent, deceptive or false means”;
- 17 b) whether Plaintiff’s and the Class’s “communication service records were procured,
18 sold or received in violation of A.R.S. § 44-1376 *et seq.*
- 19 c) whether Defendant’s conduct violates A.R.S. § 44-1376 *et seq.* or any other
20 applicable laws; and
- 21 d) whether, as a result of Defendant’s misconduct as alleged herein, Plaintiff and Class
22 members are entitled to restitution, injunctive, and/or monetary relief and, if so, the
23 amount and nature of such relief

24 48. Plaintiff’s claims are typical of the claims of Class members because Plaintiff, like
25 all class members, had her communication service records procured, sold, or received by
26 Defendant.

27 49. Plaintiff is an adequate representative of the Class because her interests do not
28 conflict with the interests of the Class members she seeks to represent, she has retained counsel

1 competent and experienced in prosecuting class actions, and she intends to prosecute this action
2 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and
3 her counsel.

4 50. The class mechanism is superior to other available means for the fair and efficient
5 adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack
6 the resources to undergo the burden and expense of individual prosecution of the complex and
7 extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases
8 the delay and expense to all parties and multiplies the burden on the judicial system presented by
9 the complex legal and factual issues of this case. Individualized litigation also presents a potential
10 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
11 management difficulties and provides the benefits of single adjudication, economy of scale, and
12 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment
13 of the liability issues will ensure that all claims and claimants are before this Court for consistent
14 adjudication of the liability issues.

15 **COUNT I**

16 **Violation of A.R.S. § 44-1376.01**

17 51. Plaintiff hereby incorporates by reference the allegations contained in all preceding
18 paragraphs of this complaint.

19 52. Plaintiff brings this claim individually and on behalf of the members of the proposed
20 Class against Defendant.

21 53. Defendant embeds spy pixels in its marketing emails sent to Plaintiff and Class
22 members.

23 54. Defendant uses the spy pixels to extract “communication service records” related to
24 the delivery of the email the spy pixel is embedded in. This includes, but is not limited to, time
25 logs of email access, associated email addresses, email client type, email path data, IP addresses,
26 and device information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. For an order certifying the Class under Fed. R. Civ. P 23 and naming Plaintiff as representative of the Class and Plaintiff’s attorneys as Class Counsel to represent the Class members;
- b. For an order declaring that Defendant’s conduct, as set out above, violates A.R.S. § 44-1376.01;
- c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- d. For actual damages or damages of \$1,000.00 for each of Defendant’s violations, whichever is more, pursuant to A.R.S. § 44-1376.04;
- e. For damages equal to the sum of any profits Defendant made for each of Defendant’s violations, pursuant to A.R.S. § 44-1376.04;
- f. For injunctive and other equitable relief as is necessary to protect the interests of the Class, including, inter alia, an order requiring Defendant to comply with A.R.S. § 44-1376 *et seq.*
- g. For an order awarding Plaintiff and the Class their reasonable attorneys’ fees and expenses and costs of suit;
- h. For pre- and post-judgment interest on all amounts awarded, to the extent allowable; and
- i. For such other and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: December 6, 2023

Respectfully submitted,

CARSON NOEL PLLC

By: /s/ Wright A. Noel
Wright A. Noel

Wright A. Noel (WSBA #25264)
20 Sixth Avenue NE
Issaquah, WA 98027
Telephone: (425) 837.4717
Email: wright@carsonnoel.com

BURSOR & FISHER, P.A.

By: /s/ Yitzchak Kopel
Yitzchak Kopel

Yitzchak Kopel*
Israel Rosenberg*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (646) 837-7150
Fax: (212) 989-9163
E-Mail: ykopel@bursor.com
irosenberg@bursor.com

BURSOR & FISHER, P.A.
Christopher R. Reilly*
701 Brickell Avenue, Suite 1420
Miami, FL 33131
Tel: (305) 330-5512
Fax: (305) 679-9006
E-Mail: creilly@bursor.com

**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS MICHELLE MCGEE, individually and on behalf of all others similarly situated.</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Wright A. Noel, Carson & Noel PLLC, 20 Sixth Avenue NE, Issaquah, WA 98027; (425) 395-7786</p>	<p>DEFENDANTS NORDSTROM INC.,</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys <i>(If Known)</i></p>
---	--

<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 28 U.S.C. § 1332(d)

Brief description of cause:
 Violation of A.R.S. § 44-1376

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
 DEMAND \$ 5mm
 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

)
)
)
)
)
)
)
)
)
)
)
)

Plaintiff(s)

v.

Civil Action No.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant’s name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: