



June 23, 2023

Peter E. Nordstrom, Director and President  
Erik B. Nordstrom, Director and Chief Executive Officer  
Nordstrom, Inc.  
1617 Sixth Avenue  
Seattle, Washington 98101

**Re: Potential Waste of Nordstrom, Inc.’s Assets and Breach of Fiduciary Duty Due to Systemic Corporate Violations of Federal Civil Rights Laws**

Gentlemen:

We write to you in your capacity as Director and President of Nordstrom, Inc. and Director and Chief Executive Officer, respectively, on behalf of Nordstrom, Inc. (the “Company”) shareholders and customers.

The purpose of this letter is to alert you to potential mismanagement and apparently intentional and systemic violations of federal civil rights laws that threaten the waste of the Company’s assets. As you should know, workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and must put into place a reasonable system of compliance monitoring and reporting relating to these mandates.<sup>1</sup> However, it appears that management and the Board have failed to do these critical things, suggesting both a lack of internal controls and an inappropriate disregard for your fiduciary duties to the Company and its shareholders.

**I. Management representations**

Management represents that it is focused on “executing with agility and delivering long-term value to our shareholders.”<sup>2</sup> It further represents that its employment and business practices “are intended to comply with applicable federal, state, local and foreign laws, tariffs, rules and regulations, as well as responsible [sic] business, social and environmental practices[.]” It further represents that if it fails either “to comply with applicable laws and regulations” or to “implement responsible [sic] business,

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<sup>1</sup> See generally *Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at \*12 (Del. Ch. Oct. 1, 2019).

<sup>2</sup> *Nordstrom Reports First Quarter 2023 Earnings*, May 31, 2023, investor.Nordstrom.com

social, environmental and supply chain practices,” it could suffer “damage to our reputation, class action lawsuits, regulatory investigations, legal and settlement costs, charges and payments, civil and criminal liability[.]” Correctly, management identifies reputational damage “arising from our diversity, environmental or social responsibility practices” as a potential risk that could “cause our stock price to decline or a default on our debt payments[.]”<sup>3</sup>

Additionally, management affirmatively represents that it has been and will continue to favor certain individuals because of their race, color, national origin, or sex in its employment practices. It further represents that it limits, segregates, or classifies employees or applicants for employment and new business in ways that would deprive, or tend to deprive, white, American-born, and/or male individuals of employment, training, or promotions because of their race, color, sex, or national origin. Finally, it represents that it engages in race-based contracting and procurement practices.

Specifically:

- The Company’s most recent Form 10-K suggests that it uses numerical quotas for hiring, training, and promotion and that management has taken extraordinary steps to ensure these quotas are embedded deeply in its business operations.<sup>4</sup> For example, to “increase representation of Black and Latinx [sic] individuals in people-manager roles by at least 50% on average” by the end of 2025, management “has operationalized diversity, equity, inclusion and belonging through consistent reviews with Erik B. Nordstrom, our Chief Executive Officer, and Farrell B. Redwine, our Chief Human Resources Officer.” Although the word “Latinx” lacks any fixed or discernable legal meaning, and the Company nowhere defines what it means, it appears that management is referring to persons with a national origin in a Spanish-speaking nation. Additionally, “Progress toward our diversity, equity, inclusion and belonging ambitions [sic] *is tracked and reviewed regularly by our executive team and Board of Directors.*<sup>5</sup> Finally, according to a management “Diversity, Inclusion, and Belonging Fact Sheet,” by the end of 2025, it “*will* increase representation of Black and Latinx populations in people-leadership roles by at least 50%” and through its internship and other

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<sup>3</sup> Nordstrom, Inc. Form 10-K Annual Report at 12, 15, 19 (2022), <https://bit.ly/3qnrqOX>; accord James Bickerton, *Bud Light Stock Suffers Huge Tumble as Company Loses \$4 Billion in One Week*, Newsweek (June 1, 2023), <https://bit.ly/3qmQQ6E>; Suzanne O’Halloran, *Target losses swell to \$12.4 billion; shares at lowest since 2020*, Fox Business (May 30, 2023), <https://fxn.ws/42iho6c>; See e.g., Phil Hall, *The Crisis at Disney: Part 1, Bob Chapek’s Blunder Road*, Markets Insider (June 21, 2022), <https://bit.ly/3zTe6vM>.

<sup>4</sup> Nordstrom, Inc. 4th Q 2022 Form 10-k at 1 (Mar. 10, 2023), <https://bit.ly/3WWOFmF>.

<sup>5</sup> Form 10-K, *supra* at 10 (emphasis added).

early-in-career programs, it “will populations with an aim of 50% representation.”<sup>6</sup>

- The Company’s self-reported data, if accurate, suggests that its hiring and promotion policies are having, and indeed, are designed to have, a disparate impact on white and/or male individuals. For example, women are substantially overrepresented in the Company’s “leadership”; management has apparently put into place a sixty percent female quota for these positions.<sup>7</sup> Also, management represents that “People of color,” another term without a fixed or discernable legal meaning, are favored for “leadership” positions.<sup>8</sup> Finally, it appears that management has implemented recruiting and hiring preferences for individuals based on sexual preference and gender identity.<sup>9</sup>
- Management admits to engaging in a program of explicitly race-based procurement and purchasing. The “Nordstrom Now Blog” avers that in 2021, management signed a “Fifteen Percent Pledge” and that the Company’s President said, “Over the next 10 years Nordstrom will grow purchases from brands owned or founded by Black individuals by 10x by the end of 2030. Long-term societal change cannot happen overnight. We are excited to partner with the Pledge on this commitment to economic equity and sustainable growth as we work to increase the number of Black-owned and founded companies we partner with throughout our business.”<sup>10</sup> Ostensibly in the name of “anti-racism,” a January 29, 2021 press release reports that management had created and was operating a racially exclusionary “national retail platform” to carry on interstate commerce, and implementing race-conscious measures to “deliver[] \$500M in retail sales from brands owned by, operated by or designed by Black and/or Latinx [sic] individuals,” seemingly at the expense of brands owned by white, Asian, mixed-race, and native-born Americans.

## **II. These programs needlessly create legal and reputational risk and threaten the waste of corporate assets**

Racial, ethnic, and sex-based “balancing” and quotas in hiring, training, compensation, and promotion are patently unlawful. *See* 42 U.S.C. §§ 2000e-2(a),

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<sup>6</sup> Nordstrom, Inc., *Our Diversity, Inclusion and Belonging Goals* (last accessed June 5, 2023) (emphasis added), <https://bit.ly/42rHWSG>; *see also* Nordstrom Press Release, *Committed To Community: Nordstrom Celebrates Black History Month, Reaffirms Commitment To Advance Diversity, Inclusion, Belonging* (Jan. 29, 2021), <https://bit.ly/43NIWTu>.

<sup>7</sup> *Id.*

<sup>8</sup> Nordstrom, Inc., “*Diversity, Inclusion, & Belonging Home Page: Our Progress*” (last accessed May 31, 2023), <https://bit.ly/3IQ6z14>.

<sup>9</sup> *Id.* at “*We Support Our Employees*”.

<sup>10</sup> *See* Nordstrom Now, *Nordstrom Joins Forces with The Folklore Group, Continues Growing Assortment of Black-Owned Brands* (Feb. 28, 2023), <https://bit.ly/3WH1UYd>.

(d).<sup>11</sup> Here, the evidence is that the Company is knowingly and intentionally discriminating with respect to compensation, terms, conditions, or privileges of employment because of race and sex in violation of 42 U.S.C. § 2000e-2(a)(1). Similarly, race-based contracting and procurement practices plainly violate applicable federal laws. Since the Civil Rights Act of 1866, codified at 42 U.S.C. § 1981, federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted, § 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’”<sup>12</sup> “By intentionally setting out a rule that makes hiring turn on sex, the employer violates the law, whatever he might know or not know about individual applicants.”<sup>13</sup>

Management’s admissions strongly suggest that it is knowingly and intentionally violating well-established federal civil rights laws. Alternatively, if management has not actually engaged in the above-described conduct but merely pretended to do so, then it is cynically and intentionally misleading customers, workers, and investors. There is no third alternative.

Management’s conduct, as outlined above, has recklessly exposed the Company both to potential state and federal civil rights investigations and enforcement actions and to significant reputational harm. Such conduct suggests either a disregard for management’s fiduciary obligations or a major breakdown in its compliance controls.

### **III. Demands for compliance**

The Company is organized and carried on primarily for the profit of shareholders. If the Company’s officers and directors are unable to demonstrate that the above-described conduct and policies clearly and concretely create shareholder value, then they have violated their fiduciary duty to shareholders by spending the Company’s funds to advance idiosyncratic political and social views. Even if every part of management’s obsessive “anti-racism,” “equity,” and “sustainability” agenda is legal (which it is not), none of it has anything to do with the quality of the Company’s products or the utility of the services it offers American consumers.

To prevent the waste of the Company’s assets, to repair and safeguard the Company’s brand, goodwill, and reputation among its core customers, to protect the Company’s shareholders, and in fulfillment of your fiduciary duty to ensure the Company’s compliance with civil rights laws and use of corporate funds for business-related

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<sup>11</sup> See, e.g., *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987); see also *Bostock v. Clayton Cnty.*, Georgia, 140 S. Ct. 1731 (2020).

<sup>12</sup> *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)).

<sup>13</sup> *Bostock v. Clayton Cty.*, 140 S. Ct. at 1736.

matters only, we demand that you and the Board immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision to offer the "*Aiming to increase representation of Black and Latinx individuals in people-manager roles by at least 50% on average*" while not offering it to potential employees that are not classified as such. To avoid the expense and disruption of litigation enforcing the Company's disclosure obligations under Washington States' Human Rights Law, SMC 14.04.031(1), the Board should affirmatively and transparently disclose all of management's contemporaneous emails and other communications on this topic to the Company's employees and shareholders. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytic data that it possesses demonstrating that this policy enhances the Company's brand reputation and promotes alignment between its business and the tastes and preferences of its core customers.
2. Compel the Company to: (a) Immediately cease and desist from all employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to advantage any racial or other group; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, and/or national origin; and (c) to retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, recruitment, and purchasing practices comply with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing the Company's disclosure obligations, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in the Company's 10-K should be made promptly and fully available.
3. Direct the General Counsel to investigate management's justification for donating corporate funds to, *inter alia*, the Black Lives Matter Global Foundation, which has been dogged by allegations of theft and mismanagement,<sup>14</sup> and the Hetrick-Martin Institute, which apparently is funding psychiatric services, hormone therapy, and perhaps surgical

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<sup>14</sup> See Nordstrom, Inc., *Committed To Community: Nordstrom Celebrates Black History Month, Reaffirms Commitment To Advance Diversity, Inclusion, Belonging* (Jan. 29, 2021), <https://bit.ly/43NIWTu>; Michelle Watson, *Black Lives Matter executive accused of 'siphoning' \$10M from BLM donors, suit says*, CNN (Sep. 5, 2022), <https://cnn.it/3MTjmnW>; Editorial Board, *Let the apparent insider payouts of BLM be a warning about any cause*, New York Post (May 21, 2022) (linking articles), <https://bit.ly/3IXqGOc>.

procedures for minors without parental consent.<sup>15</sup> The General Counsel should also conduct a comprehensive investigation to ensure management's use of corporate funds has only a business purpose, not a political one. Finally, the General should be directed to report to the Board and to the Company's shareholders to provide full transparency.

4. In anticipation of litigation, direct the Company to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed D. Rubinstein

America First Legal Foundation

CC: Stacy Brown-Philpot, Independent Director  
James L. Donald, Independent Director  
Kirsten A. Green, Independent Director  
Glenda G. McNeal, Independent Director  
Amie Thuener O'Toole, Independent Director  
Eric D. Sprunk, Independent Director  
Bradley D. Tilden, Independent Director  
Mark J. Tritton, Independent Director  
Atticus N. Tysen, Independent Director

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<sup>15</sup> See Nordstrom Now, *Nordstrom Celebrates Pride Month* (May 31, 2023), <https://bit.ly/3ChFiEw>; Hetrick-Martin Institute, *Queer and Trans Youth: A Community of Wellness* (last accessed June 6, 2023), <https://bit.ly/3MTkIPy>.