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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 Cali Bunn,

13 Plaintiff,

14 v.

15 Nike, Inc.,

16 Defendant.

CASE NO. 20-cv-07403-YGR

**DEFENDANT NIKE INC.’S ANSWER TO  
CLASS ACTION COMPLAINT FOR  
INJUNCTIVE RELIEF AND DAMAGES**

17  
18 Pursuant to Federal Rules of Civil Procedure 7, 8, and 12, Defendant Nike, Inc. (“Nike”), by  
19 and through its undersigned counsel, hereby answers the Class Action Complaint for Injunctive Relief  
20 and Damages (the “Complaint”) filed by Cali Bunn (“Plaintiff”).<sup>1</sup>

21 **INTRODUCTION**

22 1. Although the COVID-19 pandemic has made life difficult for everyone, it has caused  
23 special problems for the 37 million people in the United States and three million people in California  
24 who are deaf or hard of hearing. California state and local governments, like many governments  
25 throughout the country, require (or at least strongly recommend) the use of masks or other face  
26 coverings to reduce the spread of the novel coronavirus. In response to these directives, many retail

27  
28 <sup>1</sup> For ease of reference, the headings below match the headings used in the Complaint; Nike denies all allegations, if any, contained in the headings. Similarly, Nike reproduces the paragraph numbering used in the Complaint, including where Paragraphs were misnumbered.

1 companies in California, including defendant Nike, Inc. (“Nike”), now require their employees to wear  
2 face masks at work, at least when interacting with customers or co-workers. These mandatory masking  
3 requirements serve an important public health and safety purpose. But they can be - and in this case  
4 have been - implemented in a manner that discriminates against deaf or hard of hearing individuals in  
5 violation of state and federal law.

6 **Answer:** Nike admits that the COVID-19 pandemic has posed challenges to many individuals.  
7 Nike admits that certain state and local governments, including the State of California and certain local  
8 governments within the State of California, have promulgated regulations or guidance related to face  
9 coverings in response to the COVID-19 pandemic, which serve a public health and safety purpose.  
10 Nike admits that it enacted a policy directing its employees working in retail stores in California to  
11 wear face coverings when interacting with customers or co-workers, among other times. Nike  
12 otherwise denies the allegations in Paragraph 1 of the Complaint.

13 2. This is a class action for injunctive relief and statutory damages, brought on behalf of  
14 deaf and hard of hearing Californians who are current or future customers of Nike at its retail stores in  
15 California. Throughout California ( and perhaps, discovery will demonstrate, throughout the country),  
16 Nike has implemented a mandatory mask-wearing policy that, on information and belief, requires its  
17 retail store employees to wear Nike-supplied and Nike-branded masks made of cloth or other opaque  
18 material whenever they interact with customers and co-workers. Those opaque masks create unique  
19 communications problems for deaf and hard of hearing people, because they muffle speech and block  
20 visualization of the mouth area and facial expressions. For the substantial percentage of deaf and hard  
21 of hearing people, like plaintiff Cali Bunn, who rely on speechreading (also known as lipreading) to  
22 understand speech, Nike’s face mask requirement interferes with their ability to hear and to  
23 communicate. See, e.g., [https://www.wsi.com/articles/the-pandemic-has-made-my-hearing-problem-](https://www.wsi.com/articles/the-pandemic-has-made-my-hearing-problem-even-more-of-a-problem-115-9490805-6?mod=searchresults&page=1&pos=2;)  
24 [even-more-of-a-problem-115](https://www.wsi.com/articles/the-pandemic-has-made-my-hearing-problem-even-more-of-a-problem-115-9490805-6?mod=searchresults&page=1&pos=2;) 9490805 6?mod=searchresults&page=1&pos=2;  
25 <https://www.bbc.com/news/world-52764355>.

26 **Answer:** Nike admits that this case is brought as a putative class action demanding injunctive  
27 relief and statutory damages. Nike admits that Plaintiff has brought this case allegedly on behalf of a  
28 putative class of individuals in California who are deaf or hard of hearing. Nike admits that in response

1 to COVID-19 it enacted a policy through which its employees working in retail stores in California  
2 should wear face coverings when interacting with customers or co-workers, among other times. Nike  
3 otherwise denies the allegations in Paragraph 2 of the Complaint.

4 3. Under the federal Americans with Disabilities Act (“ADA”), the California Unruh Act,  
5 and the California Disabled Persons Act (“CDPA”), retail establishments such as defendant Nike have  
6 an affirmative duty to adopt policies or to make reasonable modifications to existing policies, and to  
7 provide auxiliary aids and services sufficient “to ensure that no individual with a disability is excluded,  
8 denied services, segregated or otherwise treated differently ” than people without disabilities. *See, e.g.*,  
9 42 U.S.C. § 12182(b)(2)(A)(ii). Nike’s current statewide policy of requiring all employees to wear  
10 opaque masks violates each of these laws by excluding disabled persons like plaintiff Bunn, and all  
11 those similarly situated, from obtaining equal access to the company’s services.

12 **Answer:** The allegations in Paragraph 3 of the Complaint are legal arguments, not factual  
13 allegations, to which no response is required. To the extent a response is required, Nike denies the  
14 allegations in Paragraph 3 of the Complaint.

15 4. There are many ways Nike could comply with its obligations under federal and state  
16 law to accommodate its deaf and hard of hearing customers while continuing to mandate the use of  
17 masks or other face coverings by its employees. For example, many companies sell face masks that  
18 have transparent plastic inserts over the mouth area to permit speechreading. Use of such masks, which  
19 cost approximately the same as traditional cloth masks, would ensure the safety of Nike’s employees  
20 and customers without discriminating against those customers who are deaf or hard of hearing. Other  
21 reasonable accommodations are also readily available, including the use of American Sign Language  
22 (“ASL”) interpreters and closed captioning devices.

23 **Answer:** Nike admits that some companies sell face masks that have transparent windows over  
24 the mouth. Nike lacks knowledge or information that “many companies sell face masks that have  
25 transparent plastic inserts over the mouth area to permit speechreading,” and that they “cost  
26 approximately the same as traditional cloth masks,” and on that basis denies those allegations. Nike  
27 admits that there are other potential accommodations for deaf and hard of hearing customers besides  
28 transparent masks. The remaining allegations in Paragraph 4 of the Complaint are legal arguments,

1 not factual allegations, to which no response is required. To the extent a response is required, Nike  
2 denies the allegations in Paragraph 4 of the Complaint.

3 5. None of these accommodations would pose an undue burden on Nike, a company whose  
4 revenues in 2019 exceeded \$39 billion. Yet Nike has failed to take any of these reasonably appropriate  
5 steps to accommodate its customers who are deaf or hard of hearing. This lawsuit seeks an injunction  
6 prohibiting Nike from continuing to discriminate against persons with hearing-related disabilities, as  
7 well as statutory damages to plaintiff and to other similarly situated California customers whose rights  
8 have been violated by Nike's unlawful conduct.

9 **Answer:** Nike admits that its revenues in 2019 exceeded \$39 billion. Nike admits that this  
10 case is brought as a putative class action demanding injunctive relief and statutory damages and that  
11 Plaintiff has brought this case allegedly on behalf of a putative class of individuals in California who  
12 are deaf or hard of hearing. Nike denies that it has failed to take reasonably appropriate steps to  
13 accommodate its customers who are deaf or hard of hearing. The remaining allegations in Paragraph  
14 5 of the Complaint are legal arguments, not factual allegations, to which no response is required. To  
15 the extent a response is required, Nike denies the allegations in Paragraph 5 of the Complaint.

16 **PARTIES**

17 6. Plaintiff Cali Bunn is 21 years old and resides in the State of California. She has severe-  
18 to-profound hearing loss, which is a physical impairment that substantially limits her major life  
19 activities of hearing and communicating. 42 U.S.C. § 12102(1)(A) and (2)(A). Plaintiff relies on  
20 speechreading and interpretation of visual cues such as facial expressions to understand speech. She is  
21 a Nike customer, whose upsetting experience at a Nike retail store while unsuccessfully trying to  
22 communicate with a masked salesperson caused her embarrassment and anguish and prevents her from  
23 returning to shop for Nike products at Nike retail stores in California that she would otherwise frequent.

24 **Answer:** To the extent the allegations in Paragraph 6 of the Complaint are legal arguments,  
25 not factual allegations, no response is required. To the extent a response is required, Nike lacks  
26 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of  
27  
28

1 the Complaint and on that basis denies them.

2 7. Defendant Nike, Inc. is an Oregon corporation with its principal place of business in  
3 Beaverton, Oregon. Nike owns and operates 384 retail stores in the United States. Approximately 37  
4 of those Nike retail stores are in California, many in Northern California. Nike’s retail stores are “public  
5 accommodations” under 42 U.S.C. § 12181(7)(E).

6 **Answer:** Nike admits that it is an Oregon corporation with its principal place of business in  
7 Beaverton, Oregon. Nike admits that it owns and operates more than 200 retail stores in the United  
8 States, approximately 43 retail stores in California, and that it has retail stores in Northern California.  
9 The remaining allegations in Paragraph 7 of the Complaint are legal arguments, not factual allegations,  
10 to which no response is required. To the extent a response is required, Nike lacks knowledge or  
11 information sufficient to form a belief as to the truth of those allegations and on that basis denies them.

12 **JURISDICTION AND VENUE**

13 8. This Court has original jurisdiction over plaintiff’s claims under California law and has  
14 concurrent jurisdiction over plaintiff’s federal ADA claim. *Yellow Freight Sys. v. Donnelly* (1990) 494  
15 U.S. 820.

16 **Answer:** The allegations in Paragraph 8 of the Complaint are legal arguments, not factual  
17 allegations, to which no response is required. To the extent a response is required, Nike admits that  
18 this Court may exercise jurisdiction over this case.

19 9. Venue is proper in this Court because Nike has not designated a principal business office  
20 in California, and because some of the events, acts and omissions giving rise to plaintiff’s claims -  
21 which arise from Nike’s statewide or nationwide policy of requiring opaque face coverings -- occurred  
22 in San Francisco County. Nike maintains a store located at 278 Post Street in San Francisco.

23 **Answer:** Nike admits that it maintains a store located at 278 Post Street in San Francisco,  
24 California. The remaining allegations in Paragraph 9 of the Complaint are legal arguments, not factual  
25 allegations, to which no response is required. To the extent a response is required, Nike admits that  
26 venue is appropriate in this judicial district, but otherwise denies the other allegations in Paragraph 9.

**GENERAL ALLEGATIONS**

1  
2 10. On information and belief, plaintiff alleges that Nike has implemented a company-wide  
3 policy applicable to all of its stores in California and throughout the United States of requiring its  
4 employees to wear masks when assisting customers. Nike’s employees comply with that policy. Nike  
5 provides its employees with masks featuring the Nike trademark swoosh. However, the masks that  
6 Nike provides its employees are made of opaque cloth or other material that covers the employees’  
7 mouths and block their facial expressions, and therefore interfere with the ability of Nike’s deaf and  
8 hard of hearing customers, including plaintiff and all those similarly situated to her, to hear and/or  
9 communicate with those Nike employees.

10 **Answer:** Nike admits that it enacted a policy through which its employees working in retail  
11 stores in California should wear face coverings when interacting with customers or co-workers, among  
12 other times. Nike admits that its employees working in retail stores in California have generally  
13 complied with this policy. Nike admits that it provided employees working in retail stores in California  
14 with masks featuring the Nike Swoosh, but denies that those are the only face coverings that have been  
15 used by employees. Nike otherwise denies the allegations in Paragraph 10 of the Complaint.

16 11. Nike claims to pride itself on providing exceptional service to its customers. According  
17 to a job listing for a Retail Sales Associate in California, Nike requires its salespersons to have a  
18 “relentless focus on product knowledge and customer service” and to provide “valuable experiences to  
19 consumers every day.” Nike requires its salespersons to be friendly, to care for customers, and to bring  
20 “passion, energy, drive & positivity into customer interactions.” Thus, friendly and personalized  
21 customer service is one of the “services,” “privileges” and “advantages” Nike provides to its customers.  
22 42 U.S.C. § 12182(b)(2)(A)(ii).

23 **Answer:** Paragraph 11 of the Complaint allegedly relates to a “job listing for a Retail Sales  
24 Associate in California,” but Nike lacks knowledge or information as to which job listing Plaintiff is  
25 referencing, and on that basis denies the allegations in Paragraph 11. The remaining allegations in  
26 Paragraph 11 of the Complaint are legal arguments, not factual allegations, to which no response is  
27 required. To the extent a response is required, Nike lacks knowledge or information sufficient to form  
28

1 a belief as to the truth of those allegations and on that basis denies them.

2 12. On July 12, 2020, plaintiff visited a Nike retail store in San Diego, California to  
3 purchase Nike-branded shoes. When she arrived at the store, all of the Nike employees on the sales  
4 floor were wearing opaque face masks that obstructed view of their mouths and facial expressions.  
5 Plaintiff asked a male salesperson for assistance in locating a pair of shoes. Because the salesperson  
6 was wearing a mask, plaintiff could not hear or understand what the salesperson was saying in response  
7 to her questions. Plaintiff indicated to the salesperson that she was having difficulty understanding him  
8 because she was hard of hearing. Twice she asked the salesperson to repeat himself. The salesperson  
9 responded by expressing frustration with plaintiff, which plaintiff found embarrassing and demeaning.  
10 The salesperson did not lower his mask, provide an auxiliary aid, or make any other attempt to  
11 effectively communicate with plaintiff. Plaintiff then asked her mother, who was standing nearby, what  
12 the salesperson had said. From that point on, the salesperson communicated with plaintiff's mother  
13 exclusively, instead of with plaintiff, causing further embarrassment to plaintiff and depriving plaintiff  
14 of the friendly and personalized customer service that Nike's hearing customers enjoy, solely because  
15 plaintiff has a disability.

16 **Answer:** Nike lacks knowledge or information sufficient to form a belief as to the truth of the  
17 allegations in Paragraph 12 of the Complaint and on that basis denies them.

18 13. Plaintiff has shopped in Nike stores in the past and would like to shop in Nike stores in  
19 the future. However, because of Nike's discriminatory face mask policy and the negative impacts that  
20 policy has had and will continue to have on plaintiff's ability to hear and communicate with Nike's  
21 sales staff, plaintiff is currently deterred from returning to Nike's retail stores and will be deterred in  
22 the future, unless and until Nike eliminates its discriminatory policy.

23 **Answer:** Nike denies that it had a discriminatory face mask policy or that its policy will  
24 continue to have a negative impact on Plaintiff's ability to hear and communicate with Nike's sales  
25 staff. Nike otherwise lacks knowledge or information sufficient to form a belief as to the truth of the  
26 allegations in Paragraph 13 of the Complaint and on that basis denies them.

27 14. On information and belief, although Nike has mandated a company-wide policy  
28 requiring all salespersons to wear masks while assisting customers, Nike has not provided any of its

1 salespersons with clear face masks or other auxiliary aids, and Nike has not provided any training to  
2 its salespersons or given them any instructions or guidance on how to accommodate customers who  
3 are deaf or hard of hearing and who for that reason cannot effectively communicate with Nike  
4 employees wearing opaque face masks.

5 **Answer:** Nike admits that it enacted a policy under which its employees working in retail  
6 stores in California should wear face coverings when interacting with customers or co-workers, among  
7 other times. Nike otherwise denies the allegations in Paragraph 14 of the Complaint.

8 **CLASS ACTION ALLEGATIONS**

9 10. Plaintiff seeks to maintain this action for injunctive relief and statutory damages as a  
10 class action under Code of Civil Procedure § 382. The Class, on whose behalf plaintiff seeks injunctive  
11 relief, consists of all individuals in California who are deaf or hard of hearing. Plaintiff also seeks  
12 certification of a statutory damages Subclass, consisting of all Class members who, since the onset of  
13 the COVID-19 pandemic and Nike's implementation of its mandatory mask-wearing policy, shopped  
14 or desired to shop at a Nike retail store in California whose customer-interacting employees wore  
15 opaque face masks. Plaintiff reserves the right to allege a nationwide class action if discovery and  
16 investigation warrant.

17 **Answer:** The allegations in Paragraph 10 of the Complaint are legal arguments, not factual  
18 allegations, to which no response is required. To the extent a response is required, Nike admits that  
19 this case is brought as a putative class action demanding injunctive relief and statutory damages and  
20 that Plaintiff has brought this case allegedly on behalf of a putative class of individuals in California  
21 who are deaf or hard of hearing. Nike admits that Plaintiff also purports to assert a subclass consisting  
22 of all putative class members who, since the onset of the COVID-19 pandemic and Nike's  
23 implementation of its mask-wearing policy, shopped or desired to shop or desired to shop at a Nike  
24 retail store in California whose customer-interacting employees wore opaque face masks. Nike admits  
25 that Plaintiff purports to reserve her right to allege a nationwide class. Nike otherwise denies the  
26 allegations in Paragraph 10 of the Complaint.



1           11.     The proposed Class is believed to consist of approximately three million members. The  
2 proposed Subclass is believed to consist of well over 1,000 members. Joinder of all of such Class and  
3 Subclass members in this lawsuit is impracticable.

4           **Answer:** The allegations in Paragraph 11 of the Complaint regarding joinder are legal  
5 arguments, not factual allegations, to which no response is required. Nike otherwise lacks knowledge  
6 or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the  
7 Complaint and on that basis denies them.

8           12.     There are numerous questions of law and fact common to the Class and Subclass,  
9 including without limitation, the following:

10           a.     Whether Nike is legally obligated to modify its mask policy and/or provide  
11 auxiliary aids such as modified face masks, ASL interpreters or closed captioning devices;

12           b.     Whether it would be an undue burden for Nike to modify its mask policy and/or  
13 provide such auxiliary aids;

14           c.     Whether Nike’s policy of requiring its employees to wear opaque face masks  
15 and failing to modify that policy and/or provide auxiliary aids violates the ADA, the Unruh Act and/or  
16 the California Disabled Persons Act (“CDPA”).

17           **Answer:** The allegations in Paragraph 12 of the Complaint are legal arguments, not factual  
18 allegations, to which no response is required. To the extent a response is required, Nike denies the  
19 allegations in Paragraph 12 of the Complaint.

20           13.     Plaintiff’s claims are typical of, and not antagonistic to, the claims of all other members  
21 of the Class and Subclass. Plaintiff adequately represents the interests of individuals who are deaf and  
22 hard of hearing, all of whom will suffer the same or similar injury due to Nike’s unlawful conduct.

23           **Answer:** The allegations in Paragraph 13 of the Complaint are legal arguments, not factual  
24 allegations, to which no response is required. To the extent a response is required, Nike denies the  
25 allegations in Paragraph 13 of the Complaint.

26           14.     Plaintiff and her counsel will fairly and adequately protect the interests of absent Class  
27 and Subclass members. There are no material conflicts between plaintiff’s claims and those of absent  
28 Class and Subclass members that would make class certification inappropriate.

1           **Answer:** The allegations in Paragraph 14 of the Complaint are legal arguments, not factual  
2 allegations, to which no response is required. To the extent a response is required, Nike denies the  
3 allegations in Paragraph 14 of the Complaint.

4           15. Plaintiff's counsel are experienced in class action and civil rights litigation and will  
5 vigorously assert plaintiff's claims and the claims of all Class and Subclass members.

6           **Answer:** The allegations in Paragraph 15 of the Complaint are legal arguments, not factual  
7 allegations, to which no response is required. To the extent a response is required, Nike denies the  
8 allegations in Paragraph 15 of the Complaint.

9           16. Nike's violations of the ADA, the Unruh Act, and the CDPA affect or potentially affect  
10 all members of the Class and Subclass. Therefore, an injunction requiring compliance with the ADA,  
11 the Unruh Act, and the CDP A, which is the primary relief sought through this lawsuit, is appropriate.  
12 Additionally, the questions of law and fact that are common to Class and Subclass members  
13 predominate over individual questions affecting members of the Class and Subclass.

14           **Answer:** The allegations in Paragraph 16 of the Complaint are legal arguments, not factual  
15 allegations, to which no response is required. To the extent a response is required, Nike denies the  
16 allegations in Paragraph 16 of the Complaint.

17           17. A class action is superior to other potential methods for achieving a fair and efficient  
18 adjudication of this controversy. Whatever difficulties may exist in the management of this case as a  
19 class action will be greatly outweighed by the benefits of the class action procedure, including but not  
20 limited to providing Class and Subclass members a method for the redress and prevention of their  
21 injuries and claims that could not, given the complexity of the issues and the nature of the requested  
22 relief, be pursued in individual litigation. Further, the prosecution of separate actions by the individual  
23 Class and Subclass members, even if possible, would create a risk of inconsistent or varying  
24 adjudications and incompatible standards of conduct for defendant.

25           **Answer:** The allegations in Paragraph 17 of the Complaint are legal arguments, not factual  
26 allegations, to which no response is required. To the extent a response is required, Nike denies the  
27 allegations in Paragraph 17 of the Complaint.

28

**FIRST CAUSE OF ACTION**

(Violation of Title III of the Americans With Disabilities Act)

18. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

**Answer:** Nike incorporates by reference its responses to the allegations contained in the foregoing paragraphs.

19. Congress enacted the ADA 30 years ago this month upon finding, among other things, that “society has tended to isolate and segregate individuals with disabilities” and that such forms of discrimination continue to be a “serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

**Answer:** Nike admits that the ADA was signed into law on July 26, 1990. The remaining allegations in Paragraph 19 of the Complaint are legal arguments, not factual allegations, to which no response is required. To the extent a response is required, Nike admits that 42 U.S.C. § 12101(a)(2) contains the quoted language, and the statute speaks for itself.

20. Acting upon these findings, Congress declared in the ADA that the purpose of the statute is to provide “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1) and (2).

**Answer:** The allegations in Paragraph 20 of the Complaint are legal arguments, not factual allegations, to which no response is required. To the extent a response is required, Nike admits that 42 U.S.C. § 12101(a)(2) contains the quoted language, and the statute speaks for itself.

21. Title III of the ADA states that “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

**Answer:** The allegations in Paragraph 21 of the Complaint are legal arguments, not factual allegations, to which no response is required. To the extent a response is required, Nike admits that 42

1 U.S.C. § 12182 contains the quoted language, and the statute speaks for itself.

2 22. Nike’s retail stores are “public accommodations” within the meaning of Title III. 42  
3 U.S.C. §12181(7)(E).

4 **Answer:** The allegations in Paragraph 22 of the Complaint are legal arguments, not factual  
5 allegations, to which no response is required. To the extent a response is required, Nike admits that 42  
6 U.S.C. § 12182 contains the quoted language, and the statute speaks for itself.

7 23. The ADA provides that it is discriminatory to subject an individual or class of  
8 individuals “to a denial of the opportunity of the individual or class to participate in or benefit from the  
9 goods, services, facilities, privileges, advantages, or accommodations of an entity” on the basis of a  
10 disability. 42 U.S.C. §12182(b)(1)(A)(i).

11 **Answer:** The allegations in Paragraph 23 of the Complaint are legal arguments, not factual  
12 allegations, to which no response is required. To the extent a response is required, Nike admits that 42  
13 U.S.C. § 12182 contains the quoted language, and the statute speaks for itself.

14 24. Discrimination under the ADA also includes a failure to “ensure that no individual with  
15 a disability is excluded, denied services, segregated or otherwise treated differently than other  
16 individuals because of the absence of auxiliary aids and services.” 28 C.F.R. §36.303(a). The “auxiliary  
17 aids and services” required to prevent discrimination in the full and equal enjoyment of a service  
18 provided by a place of public accommodation include modified face masks that reasonably permit  
19 others to speechread the wearer, ASL interpreters, and closed captioning.

20 **Answer:** The allegations in Paragraph 24 of the Complaint are legal arguments, not factual  
21 allegations, to which no response is required. To the extent a response is required, Nike admits that 28  
22 C.F.R. § 36.303(a) contains the quoted language, and the federal regulation speaks for itself. Nike  
23 otherwise denies the allegations in Paragraph 24 of the Complaint.

24 25. Nike’s acts and omissions, as described herein, violate the rights of plaintiff and the  
25 Class and Subclass members under Title III of the ADA and its implementing regulations. Nike’s  
26 unlawful discriminatory conduct as alleged herein includes, but is not limited to:

27 a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges,  
28 advantages, accommodations, and/or opportunities. 42 U.S.C. § 12182(b)(1)(A)(i);

1 b. Provision of goods, services, facilities, privileges, advantages, and/or  
2 accommodations that are not equal to those afforded non-disabled individuals. 42 U.S.C. §  
3 12182(b)(1)(A)(ii);

4 c. Failure “to make reasonable modifications in policies, practices, or procedures,  
5 when such modifications are necessary to afford such goods, services, facilities, privileges, advantages,  
6 or accommodations to individuals with disabilities, unless the entity can demonstrate that making such  
7 modifications would fundamentally alter the nature of such goods, services, facilities, privileges,  
8 advantages, or accommodations.” 42 U.S.C. § 12182(b)(2)(A)(ii); and

9 d. Failure to “ensure that no individual with a disability is excluded, denied  
10 services, segregated or otherwise treated differently than other individuals because of the absence of  
11 auxiliary aids and services.” 28 C.F.R. §36.303(a).

12 **Answer:** The allegations in Paragraph 25 of the Complaint are legal arguments, not factual  
13 allegations, to which no response is required. To the extent a response is required, Nike admits that  
14 the referenced statutes include the quoted language, and the statutes speaks for themselves. To the  
15 extent a response is required, Nike denies the allegations in Paragraph 25 of the Complaint.

16 26. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C. § 12188 and 42  
17 U.S.C. § 12205, plaintiff prays for judgment as set forth below.

18 **Answer:** The allegations in Paragraph 26 of the Complaint are legal arguments, not factual  
19 allegations, to which no response is required. To the extent a response is required, Nike admits that  
20 Plaintiff allegedly seeks the remedies set forth in the Complaint, but denies that Plaintiff is entitled to  
21 them.

22 **SECOND CAUSE OF ACTION**

23 (Violation of the Unruh Civil Rights Act)

24 27. Plaintiff incorporates by reference each and every allegation contained in the foregoing  
25 paragraphs.

26 **Answer:** Nike incorporates by reference its responses to the allegations contained in the  
27 foregoing paragraphs.

28

1           28. California’s Unruh Act guarantees that persons with disabilities are entitled to full and  
2 equal accommodations, advantages, facilities, privileges, or services in all business establishments of  
3 every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

4           **Answer:** The allegations in Paragraph 28 of the Complaint are legal arguments, not factual  
5 allegations, to which no response is required. To the extent a response is required, Nike admits that  
6 California Civil Code § 51(b) states, “All persons within the jurisdiction of this state are free and equal,  
7 and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical  
8 condition, genetic information, marital status, sexual orientation, citizenship, primary language, or  
9 immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges,  
10 or services in all business establishments of every kind whatsoever.” Nike otherwise denies the  
11 allegations in Paragraph 28 of the Complaint.

12           29. The Unruh Act also provides that a violation of the ADA is a violation of the Unruh  
13 Act. Cal. Civ. Code § 51(t).

14           **Answer:** The allegations in Paragraph 29 of the Complaint are legal arguments, not factual  
15 allegations, to which no response is required. To the extent a response is required, Nike denies that  
16 California Civil Code § 51(t) provides that a violation of the ADA is a violation of the Unruh Act  
17 because there is no subsection (t) to California Civil Code § 51.

18           30. Plaintiff and the Class and Subclass members are persons within California who are  
19 protected by the Unruh Act.

20           **Answer:** The allegations in Paragraph 30 of the Complaint are legal arguments, not factual  
21 allegations, to which no response is required. To the extent a response is required, Nike lacks  
22 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30  
23 of the Complaint and on that basis denies them.

24           31. Nike and its retail stores are business establishments that are required to comply with  
25 the provisions of the Unruh Act.

26           **Answer:** The allegations in Paragraph 31 of the Complaint are legal arguments, not factual  
27 allegations, to which no response is required. To the extent a response is required, Nike lacks  
28 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31

1 of the Complaint and on that basis denies them.

2 32. Nike's acts and omissions, as described herein, violate the rights of plaintiff and the  
3 Class and Subclass members under the Unruh Act by denying, or aiding or inciting the denial of,  
4 plaintiff's rights to full and equal use of the accommodations, advantages, facilities, privileges, or  
5 services offered by Nike to the general public. Nike has also violated the Unruh Act by denying, or  
6 aiding or inciting the denial of, plaintiff's rights to equal access arising from the provisions of the ADA.

7 **Answer:** The allegations in Paragraph 32 of the Complaint are legal arguments, not factual  
8 allegations, to which no response is required. To the extent a response is required, Nike denies the  
9 allegations in Paragraph 32 of the Complaint.

10 33. Pursuant to California Civ. Code § 52.1(f), Nike is liable to plaintiff and the Subclass  
11 members for up to three times the amount of actual damages, but in no case less than \$4,000 for every  
12 violation of California Civil Code § 51 et seq., and is liable to plaintiff and the Class members for  
13 injunctive relief and attorneys' fees and costs incurred in this action.

14 **Answer:** The allegations in Paragraph 33 of the Complaint are legal arguments, not factual  
15 allegations, to which no response is required. To the extent a response is required, Nike denies the  
16 allegations in Paragraph 33 of the Complaint.

17 **THIRD CAUSE OF ACTION**

18 (Violation of the California Disabled Persons Act, Cal. Civil Code § 54.3)

19 34. Plaintiff incorporates by reference each and every allegation contained in the foregoing  
20 paragraphs.

21 **Answer:** Nike incorporates by reference its responses to the allegations contained in the  
22 foregoing paragraphs.

23 35. The CDPA provides that "[i]ndividuals with disabilities shall be entitled to full and  
24 equal access, as other members of the general public, to accommodations, advantages, facilities, ...  
25 places of public accommodation, ... and other places to which the general public is invited ..." Cal.  
26 Civ. Code § 54.1(a)(I).

27 **Answer:** The allegations in Paragraph 35 of the Complaint are legal arguments, not factual  
28 allegations, to which no response is required. To the extent a response is required, Nike admits that

1 Paragraph 35 selectively quotes from California Civil Code § 54.1. Nike otherwise denies the  
2 allegations in Paragraph 35 of the Complaint.

3 36. The CDPA further provides that “Any person or persons, firm or corporation who denies  
4 or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and  
5 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1  
6 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a  
7 jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages  
8 but in no case less than one thousand dollars (\$1,000) and attorney’s fees as may be determined by the  
9 court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1,  
10 and 54.2.” Cal. Civ. Code § 54.3(a).

11 **Answer:** The allegations in Paragraph 36 of the Complaint are legal arguments, not factual  
12 allegations, to which no response is required. To the extent a response is required, Nike admits that  
13 Paragraph 36 quotes from California Civil Code § 54.3(a), and the statute speaks for itself. To the  
14 extent a response is required, Nike denies the allegations in Paragraph 36 of the Complaint.

15 37. A violation of the ADA is a violation of the CDPA. Cal. Civ. Code § 54.2(c).

16 **Answer:** The allegations in Paragraph 36 of the Complaint are legal arguments, not factual  
17 allegations, to which no response is required. To the extent a response is required, Nike admits that  
18 California Civil Code § 54.2 states, “A violation of the right of an individual under the Americans with  
19 Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and this  
20 section does not limit the access of any person in violation of that act.”

21 38. Nike’s retail stores are “places of public accommodation” and “places to which the  
22 general public is invited,” and as such must comply with the provisions of the CDPA.

23 **Answer:** The allegations in Paragraph 38 of the Complaint are legal arguments, not factual  
24 allegations, to which no response is required. To the extent a response is required, Nike lacks  
25 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38  
26 of the Complaint and on that basis denies them.

27 39. Nike’s acts and omissions, described herein, violate the rights of plaintiff and Class and  
28 Subclass members under the CDPA.



1           **Answer:** The allegations in Paragraph 39 of the Complaint are legal arguments, not factual  
2 allegations, to which no response is required. To the extent a response is required, Nike denies the  
3 allegations in Paragraph 39 of the Complaint.

4           40.      Plaintiff prays for statutory damages for the Subclass and attorneys' fees for the Class  
5 and Subclass pursuant to Cal. Civ. Code § 54.3(a).

6           **Answer:** The allegations in Paragraph 40 of the Complaint are legal arguments, not factual  
7 allegations, to which no response is required. To the extent a response is required, Nike admits  
8 Plaintiff's prayer for relief includes requests for reasonable attorneys' fees and statutory damages  
9 allegedly pursuant to California Civil Code § 54.3. Nike denies that Plaintiff is entitled to any relief  
10 whatsoever.

11   **PRAYER FOR RELIEF**

12           Nike denies that Plaintiff is entitled to any of the relief requested in the Prayer for Relief  
13 contained in the Complaint. Nike further contends that Plaintiff is not entitled to any relief whatsoever.

14   **SEPARATE AND ADDITIONAL DEFENSES**

15           Without assuming any burden that it would not otherwise bear, and reserving its right to amend  
16 its Answer to assert additional defenses as they may become known during discovery or otherwise,  
17 Nike asserts the separate and additional defenses set forth below. All allegations of the Complaint not  
18 heretofore admitted or denied are here and now denied as though specifically denied herein.

19   **FIRST SEPARATE AND ADDITIONAL DEFENSE**

20           The Complaint, and each purported cause of action contained therein, is barred in whole or in  
21 part because it fails to state facts sufficient to constitute a claim or cause of action against Nike.

22   **SECOND SEPARATE AND ADDITIONAL DEFENSE**

23           Plaintiff lacks standing and did not suffer any concrete or cognizable injury.

24   **THIRD SEPARATE AND ADDITIONAL DEFENSE**

25           Plaintiff's claims are barred by equitable doctrines, including but not limited to laches, waiver,  
26 estoppel, and unclean hands.

1 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

2 Plaintiff's claims are barred because Nike at all relevant times acted in good faith reliance upon  
3 a reasonable interpretation of applicable law.

4 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

5 Plaintiff's claims are barred because Nike's conduct was the product of legitimate business  
6 judgment.

7 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

8 Plaintiff's claims and requested relief are barred to the extent they are moot.

9 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

10 Plaintiff suffered no damages as a result of any alleged act or omission of Nike, and even if  
11 Plaintiff suffered damages or injuries, all or some portion of said damages or injuries was caused or  
12 attributable to Plaintiff's failure to take reasonable action to mitigate said damages or injuries, if any.

13 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

14 This case is not properly maintainable as a class action.

15 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

16 Plaintiff's requests for equitable, injunctive, and declaratory relief are barred because an  
17 adequate remedy at law exists.

18 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

19 The damages alleged by Plaintiff, if any, were not proximately caused by any unlawful policy,  
20 custom, practice, and/or procedure promulgated and/or tolerated by Nike. Nor are the damages alleged  
21 by Plaintiff, if any, caused in fact by Nike. Each purported cause of action asserted against Nike is  
22 barred because the harm Plaintiff allegedly suffered, if any, was caused by superseding and intervening  
23 causes including factors, persons, or entities other than Nike.

24 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

25 The accommodations, auxiliary aids, and/or modifications requested by Plaintiff are not readily  
26 achievable, reasonable, or feasible.

1 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

2 The accommodations, auxiliary aids, and/or modifications requested by Plaintiff would result  
3 in undue burden.

4 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

5 Plaintiff's claims are barred because Nike could reasonably conclude that the accommodations,  
6 auxiliary aids, and/or modifications requested by Plaintiff could create a direct threat to the health or  
7 safety of Plaintiff, Nike's employees, or the general public.

8 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

9 Plaintiff's claims are barred because Nike did not intentionally discriminate against Plaintiff.

10 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

11 Plaintiff's request for statutory penalties violate both the due process clauses of the Fifth and  
12 Fourteenth Amendments to the United States Constitution as well as the Eighth Amendment to the  
13 United States Constitution.

14 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

15 Plaintiff's request for injunctive relief is barred because Plaintiff has not suffered, and is not at  
16 risk of suffering, irreparable harm.

17 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

18 Plaintiff is barred from relief, in whole or in part, to the extent it results in an unjust enrichment  
19 to Plaintiff and/or any person on whose behalf relief is sought.

20 **RESERVATION OF RIGHTS**

21 Nike reserves the right to amend this Answer to assert additional defenses and/or supplement,  
22 alter, or change this Answer as may be warranted by the revelation of information during discovery  
23 and investigation.

24 **PRAYER**

25 WHEREFORE, Nike prays as follows:

26 1. That Plaintiff and members of the purported class and subclass take nothing by way of  
27 the Complaint;

- 1            2.        That Plaintiff’s Complaint and each purported claim for relief alleged therein be
- 2 dismissed with prejudice;
- 3            3.        That Nike be awarded its costs of suit, including reasonable attorneys’ fees; and
- 4            4.        For such other and further relief as the Court may deem just and proper.

5  
6 Dated: November 12, 2020

7    AUSTIN SCHWING  
8    RACHEL S. BRASS  
9    JOSEPH R. ROSE  
10     JULIAN WOLFE KLEINBRODT  
11     GIBSON, DUNN & CRUTCHER LLP

12    By: /s/ Austin Schwing  
   Austin Schwing

13    Attorneys for Nike, Inc.  
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