

CIVIL COVER SHEET

JS 44 (Rev. 12/97) (CAND Rev 1/10)

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 PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS: WEBSTER PROCTOR, on behalf of themselves and all others similarly situated, and the general public. DEFENDANTS: NIKE RETAIL SERVICES, INC. et al. (b) County of Residence of First Listed Plaintiff: California (EXCEPT IN U.S. PLAINTIFF CASES). (c) Attorney's (Firm Name, Address, and Telephone Number): HOFFMAN EMPLOYMENT LAWYERS, LLP, Michael Hoffman (SBN 154481), mhoffman@employment-lawyers.com, 333 BUSH STREET 2250, SF CA 94104 415.362.1111. Includes 'E-filing' and 'MEJ' stamps.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only). III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant). Includes checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, and various citizenship options (Citizen of This State, Citizen of Another State, Foreign Nation, etc.).

IV. NATURE OF SUIT (Place an "X" in One Box Only). Grid of categories: CONTRACT (Insurance, Marine, etc.), REAL PROPERTY (Land Condemnation, etc.), TORTS (Personal Injury, Civil Rights, Prisoner Petitions, Habeas Corpus), FORFEITURE/PENALTY (Agriculture, Drug Seizure, etc.), LABOR (Fair Labor Standards, etc.), IMMIGRATION (Naturalization, etc.), BANKRUPTCY (Appeal, Withdrawal, etc.), SOCIAL SECURITY (HIA, Black Lung, etc.), FEDERAL TAX SUITS (Taxes, etc.), OTHER STATUTES (Reapportionment, Antitrust, etc.).

V. ORIGIN (Place an "X" in One Box Only). Includes checkboxes for Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from another district, Multidistrict Litigation, and Appeal to District Judge from Magistrate Judgment.

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 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332. Brief description of cause: Labor Code Violations, Off the Clock.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$: CHECK YES only if demanded in complaint: JURY DEMAND: Yes [X] No []

VIII. RELATED CASE(S) IF ANY: PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY). Includes checkboxes for SAN FRANCISCO/OAKLAND [X], SAN JOSE [], and EUREKA [].

DATE: SIGNATURE OF ATTORNEY OF RECORD:

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6 Attorneys for Plaintiff WEBSTER PROCTOR

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

MEJ

10
11 WEBSTER PROCTOR, on behalf of themselves
12 and all others similarly situated, and the general
public

CV 11 6711

CLASS ACTION

13 Plaintiffs

COMPLAINT FOR:

14 v.

15 NIKE RETAIL SERVICES, INC., an Oregon
16 Corporation, NIKE USA, INC., an Oregon
17 Corporation, NIKE, INC., an Oregon
Corporation

18 Defendants

1. **Failure to Compensate Employees for All Hours Worked** (IWC wage Order No. 7, Cal. Labor Code §§ 200, 226, 500, 510, 1197, 1198);
2. **Failure to Pay Overtime** (Cal. Labor Code §§204, 216, 510, 558, 1198)
3. **Failure to Pay Overtime** (F.L.S.A. 29 U.S.C. § 201 *et seq.*)
4. **Failure to Provide Meal and Rest Periods** (Cal. Lab. Code § 226.7, 512; IWC Wage Order No. 9-2001)
5. **Failure to Furnish Accurate Wage Statements** (Cal. Labor Code §§ 226(e), 226.3);
6. **Failure to Maintain Employee Time Records** (Cal. Labor Code § 1174(d));
7. **Unfair Competition** (Cal. Bus. & Prof. Code § 17200 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff WEBSTER PROCTOR on behalf of himself and on behalf of all others similarly
2 situated, complains against Defendants NIKE RETAIL SERVICES, INC., NIKE USA, INC.,
3 and NIKE, INC. (“Defendants”), and demands a trial by jury of all issues and causes of action.

4 **THE PARTIES**

5 1. At all pertinent times mentioned in this Complaint, Plaintiff WEBSTER
6 PROCTOR (hereinafter “Mr. Proctor” or the “Named Plaintiff”) was and is a competent adult
7 resident of the State of California.

8 2. Mr. Proctor was employed by Defendants as a non-exempt hourly sales associate
9 from approximately April 2010 until approximately May 2011. Mr. Proctor worked in the San
10 Francisco NikeTown store. Mr. Proctor generally worked four (4) 8-hour shifts per week, not
11 including compensated and uncompensated overtime, uncompensated meal and rest breaks, and
12 any additional shifts taken, voluntarily or not. Mr. Proctor was deprived of pay for all the hours
13 he worked, meal and rest breaks, and proper overtime pay.

14 3. Named Plaintiff brings this action on behalf of himself individually and as a
15 member of and representative for the following classes:

- 16 a. “All employees of Defendants who worked as Sales Associates, or any
17 other non-exempt job position, who were subject to Defendants’ policy of
18 searching Defendants’ employees upon exiting one of Defendants’ store
19 locations in California from December 28, 2007, to the date of filing this
20 Complaint.” This group is hereinafter referred to as the “California
21 Class.” This period of time is hereinafter referred to as the “California
22 Class Period.”
- 23 b. “All employees of Defendants who worked as Sales Associates, or any
24 other non-exempt job position, who were subject to Defendants’ policy of
25 searching Defendants’ employees upon exiting one of Defendants’ store
26 locations in the United States of America from December 28, 2008, to the
27 date of filing this Complaint.” This group is hereinafter referred to as the
28

1 "Nationwide Class." This period of time is hereinafter referred to as the
2 "Nationwide Class Period."

3 4. Nike, Inc. is a corporation organized under Oregon law and has its headquarters in
4 that state. Nike operates NikeTown stores across the country, including the NikeTown store at
5 which Mr. Proctor was employed, located at 278 Post St., San Francisco, CA 94108.
6 Nationwide, Defendants operate 10 NikeTown stores, 6 Nike Stores, 1 Nike Women's Store, 136
7 Nike Factory Stores, and 9 Nike Clearance Stores. In 2011, Nike employed 38,000 individuals.
8 In regards to its sales associates and other non-exempt employees who were subject to
9 Defendants' search policy, Defendants did not pay them for all hours they worked and, as
10 alleged herein, committed other violations of law.

11 **JURISDICTION AND VENUE**

12 5. At all times mentioned in this Complaint, Named Plaintiff was a resident of the
13 State of California.

14 6. Defendant Nike, Inc. has been doing business in the State of California, and the
15 Northern District. Nike, Inc. is a corporation organized under the laws of the State of Oregon,
16 with its principal corporate headquarters at One Boweman Drive, Beaverton, Oregon 97005. It
17 is registered with the Secretary of State to do business in California as a corporation under Entity
18 No. C1100158, and does business in California and within this District as Nike.

19 7. Defendant Nike Retail Services, Inc. has been doing business in the State of
20 California, and the Northern District. Nike Retail Services, Inc. is a corporation organized under
21 the laws of the State of Oregon, with its principal corporate headquarters at One Boweman
22 Drive, Beaverton, Oregon 97005. It is registered with the Secretary of State to do business in
23 California as a corporation under Entity No. C1643623, and does business in California and
24 within this District as Nike.

25 8. Defendant Nike USA, Inc. has been doing business in the State of California, and
26 the Northern District. Nike USA, Inc. is a corporation organized under the laws of the State of
27 Oregon, with its principal corporate headquarters at One Boweman Drive, Beaverton, Oregon
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1 97005. It is registered with the Secretary of State to do business in California as a corporation
2 under Entity No. C2109987, and does business in California and within this District as Nike.

3 9. The Northern District of California has personal jurisdiction over Defendants
4 because Defendants maintain their San Francisco NikeTown store in this District, do business in
5 California and in this district, and because many of the acts complained of and giving rise to the
6 claims alleged in California and in this District.

7 10. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C.
8 § 1331; Section 16(b) of the Fair Labor Standards Act (“FLSA”).

9 11. In addition, this Court has supplemental jurisdiction under 28 U.S.C. 1367 over
10 Named Plaintiff’s state wage and hour law claims, because those claims derive from a common
11 nucleus of operative fact.

12 12. In addition, this Court has diversity jurisdiction under 28 U.S.C. 1332 over all of
13 Named Plaintiff’s claims, because there is complete diversity between the Named Plaintiff and
14 all Defendants and the amount in controversy in this matter is greater than \$75,000.

15 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
16 Defendants’ obligations and liability arise in this district, Defendants transact business within
17 this Judicial District, and because Named Plaintiff performed the work at issue in this action for
18 Defendants in this Judicial District. The Named Plaintiff was employed at the NikeTown store
19 located in San Francisco, California.

20 **CALIFORNIA CLASS ACTION ALLEGATIONS**

21 14. The Named Plaintiff seeks to represent a class of California employees. The
22 California Class is defined as: “All employees of Defendants who worked as Sales Associates, or
23 any other non-exempt job position, who were subject to Defendants’ policy of searching
24 Defendants’ employees upon exiting one of Defendants’ store locations in California from
25 December 28, 2007, to the date of filing this Complaint.”

26 15. **Common questions predominate.** There is a well-defined community of interest
27 in the questions of law and fact affecting the California Class, in that a systematic and
28 continuous course of illegal practices was applied to all of them alike, to wit: Defendants (1)

1 failed to compensate the California Class for all hours worked; (2) failed and refused to provide
2 the California Class with timely and accurate wage and hour statements; (3) failed and refused to
3 maintain complete and accurate payroll records for the California Class; (4) failed to provide rest
4 breaks as required by federal and California law, (5) required employees to work unpaid hours
5 before and after their scheduled shifts, and (6) committed unfair business practices in an effort to
6 increase profits and to gain an unfair business advantage at the expense of the California Class
7 and the public. The common practices by Defendants that led to these violations are detailed
8 throughout this Complaint. These common questions of law and fact predominate over any
9 individual question relating to any California Class. The forgoing acts and other acts by
10 Defendants violated the California Labor Code and the applicable Wage Orders issued by the
11 Industrial Welfare Commission of the State of California (collectively, the "Employment Laws
12 and Regulations").

13 16. **Numerosity.** Named Plaintiff is informed and believes that the California Class
14 consists of over 100 individuals, making joinder of all members of the California Class
15 impracticable and making treatment of all class members' claims collectively, rather than
16 individually, to the benefit of the parties and the Court.

17 17. **Typicality.** Named Plaintiff's claims are typical of those claims of other members
18 of the California Class, in that his job titles, duties and activities are the same as those of the
19 other members of the California Class, he was denied the same overtime and premium pay, pay,
20 and rest breaks as the rest of the California Class, and was otherwise denied the benefits and
21 protections of the Employment Laws and Regulations in the same manner as the other members
22 of the California Class.

23 18. **Adequacy.** Named Plaintiff is able to fairly and adequately protect the interests
24 of the California Class, because (1) his interests are aligned with those of the California Class in
25 that his claims are a typical of all other members of the California Class, the California Class as a
26 whole shares many common questions of law and fact, and there is no evidence of any
27 antagonism or conflict between Named Plaintiff and other members of the California Class; and
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1 (2) Named Plaintiff's counsel is competent and experienced in litigating class actions in
2 California based on violations of the Employment Laws and Regulations.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 19. Named Plaintiff brings the Sixth Cause of Action for violation of the FLSA as a
5 collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of the
6 Nationwide Class. Consent to sue for violations of the FLSA pursuant to 29 U.S.C. § 216(b) and
7 256. *See* Exhibit "A."

8 20. Named Plaintiff and Nationwide Class are similarly situated in that they have
9 substantially similar job requirements and pay provisions, and are subject to Defendants'
10 common practice, policy, or plan of unlawfully requiring members of the Nationwide Class to
11 work off the clock and refusing to pay wages or overtime for these hours worked in violation of
12 the FLSA.

13 21. This Nationwide Class is defined as follows: "All employees of Defendants who
14 worked as Sales Associates, or any other non-exempt job position, who were subject to
15 Defendants' policy of searching Defendants' employees upon exiting one of Defendants' store
16 locations in the United States of America from December 28, 2008, to the date of filing this
17 Complaint."

18 22. The cause of action for violations of the FLSA may be brought and maintained as
19 an "opt-in" collective action pursuant to §16(b) of the FLSA, 29 U.S.C. § 216(b), since the
20 claims of the Named Plaintiff is similar to the claims of the Nationwide Class.

21 23. The names and addresses of the Nationwide Class are available from Defendants'
22 records. Notice should be provided to the Nationwide Class via first class mail, e-mail, and
23 posting in the offices where they have worked, as soon as possible.

24 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

25 24. On information and belief, all policies and practices described herein as being in
26 place at Named Plaintiff's principal place of employment -- the NikeTown location in San
27 Francisco -- were also polices that were in place at Defendants' other stores in California and the
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1 United States of America. As such, all members of both proposed classes were subject to these
2 same policies in violation of California and federal law.

3 25. At all relevant times alleged herein, Named Plaintiff is informed and believes that
4 the Defendants are authorized to and do conduct business in the State of California in the
5 sportswear industry, employing members of the California Class at about 10 NikeTown stores, 6
6 Nike Stores, 1 Nike Women's Store, 136 Nike Factory Stores, and 9 Nike Clearance Stores in
7 the United States of America.

8 26. Members of both classes are, and at all pertinent times have been, non-exempt
9 employees of Defendant within the meaning of the FLSA, the California Labor Code and the
10 IWC Wage Orders.

11 27. Members of the California Class are consistently deprived of uninterrupted rest
12 and meal periods. Members of the California Class, including the Named Plaintiff, are rarely
13 able or allowed to take two rest breaks during their eight hour shifts. As a policy, Defendants did
14 not provide a mechanism that would allow members of the California Class to take breaks
15 without that employee's "station" being covered by another associate or manager. If a member
16 of the California Class was to take a break without having coverage by another employee, that
17 member of the California Class would face reprimand that could result in termination. In the
18 case of the Named Plaintiff, he was generally the only sales associate staffing his station. Since
19 managers were generally busy with other tasks, there was generally no employee available to
20 relieve the Named Plaintiff, and Named Plaintiff was therefore unable to take a rest break
21 without receiving reprimand from his supervisors. In fact, in the case of the Named Plaintiff, his
22 number of shifts was substantially reduced and he faced harassment by his supervisors after he
23 complained to Human Resources about Defendants' refusal to provide rest breaks in accordance
24 with California laws.

25 28. Defendants' policies resulted in members of both classes working substantial time
26 "off-the-clock" both before and after their shifts. Members of both classes were required to
27 come to work prior to clocking in to go to a locker room provided at the store location and put on
28 the required uniform and place their personal items in a locker. Members of both classes could

1 not clock in until after they had dressed in the locker room. Members of both classes would
2 receive an immediate “write-up” if they did not go to their lockers prior to clocking in. At the
3 end of their shifts, members of both classes were required to clock out prior to going back to the
4 locker room to change into their own clothes and retrieve personal items. As additional and
5 substantial off-the-clock time, members of both classes were subject to a search of their person in
6 every instance when they left the store location. This search occurred after clocking out for
7 every meal break and also after clocking out to leave the store location at the end of every shift.
8 In all instances, members of both classes were required to clock out prior to undergoing this
9 search. Defendants have instituted a uniform policy throughout California and the United States
10 of America that requires that an employee designated as a “manager” perform a search of each of
11 Defendants’ employees exiting the store premises. Managers would routinely and consistently
12 be unavailable to conduct searches promptly and members of both classes would routinely and
13 consistently have to wait for a manager to report to the store exit prior to undergoing this search.
14 In the case of Named Plaintiff, he would be forced to stay at the store location up to 30 minutes
15 after he had clocked out at the end of his shift or at the beginning of his meal break during his
16 tenure as a Sales Associate of Defendants.

17 29. Defendants’ policy and practice of requiring members of both classes to clock out
18 prior to changing out of their work clothing or undergoing a search of their person also resulted
19 in unpaid overtime in violation of California and federal law. Not only was none of this time
20 paid to members of both classes, but, in most cases, members of both classes were working eight
21 hour shifts, and were entitled to overtime under California law for any time worked past eight
22 hours. In the case of Named Plaintiff, on average, he spent several hours each week on the store
23 premises without receiving pay, by: (1) being prevented from clocking in upon starting work, (2)
24 being prevented from exiting Defendant’s store location after clocking out. In each of these
25 instances, Named Plaintiff and members of both classes faced reprimand and potential
26 termination if they did not follow Defendants’ procedures.

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FIRST CAUSE OF ACTION BY THE CALIFORNIA CLASS

Failure to Properly Compensate Employees for All Hours Worked

(Cal. Labor Code §§ 200, 226, 500, 510, 1197, 1198)

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4 30. Named Plaintiff incorporates by reference paragraphs 1 through 29 as though set
5 forth fully herein.

6 31. During the California Class Period, Defendants were required to compensate
7 Named Plaintiff and members of the California Class for all hours worked pursuant to the
8 Industrial Welfare Commission Order 1-2001, California Code of Regulations, Title 8, Chapter
9 5, Section 11070, Labor Code Sections 200, 226, 500, 510, 1197, and 1198.

10 32. At all relevant times, Defendants failed and refused to compensate Named
11 Plaintiff and members of the California Class for all hours worked. As alleged throughout this
12 Complaint, the California Class was forced to: (1) report to their lockers prior to clocking in to
13 work, (2) clock out prior to a search before each meal break, (3) clock out prior to returning to
14 their locker at the end of their shift, and (4) clock out prior to the search at the end of their shift.
15 Members of the California Class were thus not compensated for work performed during these
16 off-the-clock periods.

17 33. Furthermore, as described above, Defendants engaged in multiple practices
18 designed to avoid their California and federal obligations to properly compensate their
19 employees for overtime hours worked, including: (1) instituting a policy in regards to clocking in
20 and out that essentially forced employees to perform off the clock work or face reprimand, and
21 (2) placing employees in a situation where they could not take a rest break without facing
22 reprimand, thus forcing employees to perform work during these rest breaks.

23 34. As alleged herein, Named Plaintiff and the California Class are not exempt from
24 the requirements of the Employment Laws and Regulations.

25 35. Named Plaintiff and the California Class have been deprived of their rightfully
26 earned compensation as a direct and proximate result of Defendants' failure and refusal to pay
27 said compensation. Under the Employment Laws and Regulations, Named Plaintiff and each
28 member of the California Class is entitled to recover compensation for all hours worked, but not

1 paid, for the three (3) years preceding the filing of this action, in addition to reasonable
2 attorney's fees and costs of suit.

3 **SECOND CAUSE OF ACTION BY THE CALIFORNIA CLASS**

4 **Failure to Provide Overtime Pay**

5 **(Cal. Labor Code §§204, 216, 510, 558, 1198)**

6 36. Named Plaintiff incorporates by reference paragraphs 1 through 35 as though set
7 forth fully herein.

8 37. During the last four years, and at all relevant times in this Complaint, Named
9 Plaintiff was not exempt from receiving overtime compensation.

10 38. During the last four years, and at all relevant times in this Complaint, Defendants
11 required Named Plaintiff and the California Class to work in excess of 8 hours per day, and/or in
12 excess of 40 hours per week in violation of Labor Code § 1198.

13 39. During the last four years, and at all relevant times in this Complaint, Named
14 Plaintiff and the California Class were entitled to receive one-and-one half times the hourly wage
15 for each hour worked past 8 hours in one day, one-and-one half times the hourly wage for each
16 hour worked past 40 hours in one week, and twice the hourly wage for each hour worked past 12
17 hours in one day and for all hours over during their seventh consecutive day of work in one
18 week.

19 40. During the last four years, and at all relevant times in this Complaint, Defendants
20 violated Labor Code § 510 when they failed to pay overtime wages for all work performed in
21 excess of 8 hours per day and/or for all work performed in excess of 40 hours per week, and
22 within the time frame set forth under the law. As a consequence for violating Labor Code § 510,
23 Defendants are subject to all applicable penalties including those specified pursuant to Labor
24 Code § 558. The exact amount of the applicable penalties will be proved at time of trial.

25 41. During the last four years, and at all relevant times in this Complaint, Defendants
26 violated Labor Code § 204 when they failed to pay Named Plaintiff and the California Class for
27 all wages earned for labor in excess of the normal work period no later than the pay day for the
28 next regular payroll period. As a consequence for violating Labor Code § 204, Defendants are

1 subject to all applicable penalties including those specified pursuant to Labor Code § 210. The
2 exact amount of the applicable penalties will be proved at time of trial.

3 42. During the last four years, and at all relevant times in this Complaint, Defendants
4 intentionally refused to pay overtime wages to Named Plaintiff and the California Class in order
5 to receive economic benefit in violation of Labor Code § 216. As a consequence for violating
6 Labor Code § 216, Defendants are subject to all applicable penalties including those specified
7 pursuant to Labor Code § 225.5. The exact amount of the applicable penalties will be proved at
8 time of trial.

9 43. At all relevant times in this Complaint, Defendants were and are an employer
10 within the meaning of Labor Code § 558 and violated or caused to be violated a provision or
11 provisions of Part 2 of the Labor Code regulating hours and days of work and, as such, are liable
12 to Named Plaintiff and the California Class for each such violation as set forth in Labor Code §
13 558, in addition to an amount sufficient to recover underpaid wages. The exact amount of the
14 applicable penalties will be proved at time of trial.

15 44. Named Plaintiff and the California Class seek and are entitled to interest on all
16 due and unpaid wages pursuant to Labor Code § 218.6.

17 45. Pursuant to Labor Code § 1194, Named Plaintiff and the California Class seek to
18 recover in a civil action the unpaid balance of the full amount of the unpaid overtime
19 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

20 **THIRD CAUSE OF ACTION BY THE NATIONWIDE CLASS**

21 **Failure to Provide Overtime Pay**

22 **(FLSA, 29 U.S.C. § 201 *et seq.*)**

23 46. Named Plaintiff incorporates by reference paragraphs 1 through 45 as though set
24 forth fully herein.

25 47. At all relevant times, Defendants have been, and continue to be, "employers"
26 engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within
27 the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed,
28 and continue to employ, "employee[s]," including Named Plaintiff and each member of the

1 Nationwide Class. At all relevant times, Defendants have had gross operating revenues in excess
2 of \$500,000.

3 48. Attached hereto as Exhibit "A" is Named Plaintiff's Consent to Sue forms
4 pursuant to § 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256. It is likely other similarly
5 situated individuals will sign consent forms and join as Plaintiffs on this claim in the future.

6 49. The FLSA requires each covered employer, including Defendants, to compensate
7 all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay
8 for work performed in excess of forty hours in a workweek.

9 50. Named Plaintiff and the Nationwide Class are non-exempt employees entitled to
10 be paid overtime compensation for all overtime hours worked.

11 51. At all relevant times, Defendants, pursuant to their policies and practices, often
12 failed and refused to pay overtime premiums to Named Plaintiff and the Nationwide Class for
13 hours worked in excess of forty hours per week. The Nationwide Class often works more than
14 forty hours per week, inclusive of the off-the-clock time that results from Defendants' policies.
15 To this end, as described above, Defendants forced employees to perform off the clock work
16 both during their breaks and before and after their shifts, thus rendering these actually worked
17 hours outside the scope of overtime calculations.

18 52. By failing to compensate Named Plaintiff and the Nationwide Class at a rate not
19 less than one and one-half times the regular rate of pay for work performed in excess of forty
20 hours in a workweek, Defendants violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201
21 *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

22 53. By failing to record, report, and/or preserve records of all hours worked by
23 Named Plaintiff and the Nationwide Class, Defendants failed to make, keep, and preserve
24 records with respect to each of its employees sufficient to determine their wages, hours, and
25 other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*,
26 including 29 U.S.C. § 211(c) and § 215(a).

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1 54. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA
2 within the meaning of 29 U.S.C. § 255(a), as Defendants knowingly instituted policies that
3 resulted in substantial off-the-clock work.

4 55. Named Plaintiff, on behalf of himself and the Nationwide Class, seeks recovery of
5 attorneys' fees and costs of action to be paid by Defendants, as provided by the FLSA, 29 U.S.C.
6 § 216(b).

7 56. Named Plaintiff, on behalf of himself and the Nationwide Class, seeks damages in
8 the amount of unpaid overtime compensation, liquidated damages as provided by the FLSA, 29
9 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems just and
10 proper.

11 **FOURTH CAUSE OF ACTION BY THE CALIFORNIA CLASS MEMBERS**

12 **Failure to Provide Meal and Rest Periods**

13 **(Cal. Lab. Code § 226.7, 512; IWC Wage Order No. 9-2001)**

14 57. Named Plaintiff incorporates by reference paragraphs 1 through 56 as though set
15 forth fully herein.

16 58. During the California Class Period, and as described in detail in this complaint,
17 Defendants routinely failed to provide Named Plaintiff and the California Class Members with
18 meal and rest periods during their work shifts, and failed to compensate them for said meal and
19 rest periods, as required by California Labor Code sections 226.7 and 512, and Industrial
20 Welfare Commission Order 9-2001. In the case of the Named Plaintiff, as alleged in detail
21 above, Defendants instituted a policy that forced him to work during his rest break during almost
22 every shift. This same policy resulted in the California Class being prevented from taking rest
23 breaks, and, in certain instances, from taking their required meal breaks.

24 59. Named Plaintiff and the California Class are not exempt from the meal and rest
25 period requirements of the aforementioned employment laws and regulations.

26 60. Named Plaintiff alleges that Defendants are aware that the California Class does
27 not actually get the required breaks. Defendants' policy requires one sales associate to be at each
28 station, and, in many instances, this results in employees who service a station alone to be unable

1 to take a rest break. Named Plaintiff alleges that Defendants actively discouraged himself and
2 the California Class from taking breaks.

3 61. Named Plaintiff alleges that while Defendants enacted policies to take lunch and
4 rest breaks, those policies were not enforced or applied to Named Plaintiff or the California Class
5 because they would be criticized and negatively reviewed if they did not work during their
6 breaks.

7 62. Named Plaintiff and the California Class have been deprived of their rightfully
8 earned compensation for meal and rest periods as a direct and proximate result of Defendants'
9 failure and refusal to pay said compensation. Named Plaintiff and the California Class are
10 entitled to recover such amounts pursuant to California Labor Code section 276.7(b), plus
11 interest thereon, attorney's fees, and costs of suit.

12 **FIFTH CAUSE OF ACTION BY THE CALIFORNIA CLASS**

13 **Failure to Furnish Wage and Hour Statements**

14 **(Cal. Labor Code §§ 226(e), 226.3)**

15 63. Named Plaintiff incorporates by reference paragraphs 1 through 62 as though set
16 forth fully herein.

17 64. During the California Class Period, Defendants failed to provide Named Plaintiff
18 and the California Class with timely and accurate wage and hour statements showing gross
19 wages earned, total hours worked, all deductions made, net wages earned, the name and address
20 of the legal entity employing that member of the California Class, and all applicable hourly rates
21 in effect during each pay period and the corresponding number of hours worked at each hourly
22 rate. The wage statements that were provided to Named Plaintiff and members of the California
23 Class reflect errors related to Defendants' other violations of California labor laws, including but
24 not limited to Defendants' failure to compensate for all hours worked, failure to compensate for
25 all overtime hours worked and failure to provide meal and rest breaks.

26 65. As alleged herein, Named Plaintiff and members of the California Class are not
27 exempt from the requirements of the Employment Laws and Regulations.
28

1 66. Based on Defendants’ conduct as alleged herein, Defendants are liable for
2 damages and statutory penalties pursuant to California Labor Code section 226, and other
3 applicable provisions of the Employment Laws and Regulations.

4 **SIXTH CAUSE OF ACTION BY THE CALIFORNIA CLASS**

5 **Failure to Maintain Employee Time Records**

6 **(Cal. Labor Code § 1174(d))**

7 67. Named Plaintiff incorporates by reference paragraphs 1 through 66 as though set
8 forth fully herein.

9 68. California Labor Code Section 1174(d) requires all employers to keep proper
10 employee time records, including payroll records, which must show the daily hours worked by
11 each employee.

12 69. As described in detail in this Complaint, the pay records for Named Plaintiff and
13 the California Class reflect improper payments, as Named Plaintiff and the California Class were
14 forced to perform “off-the-clock” work, were forced to work during rest and lunch breaks, and
15 weren’t compensated for all regular hours worked and all overtime hours worked.

16 70. As a result, the employee time records, if any, maintained by Defendants are
17 wholly inaccurate, as they do not reflect the true hours worked by Named Plaintiff and the
18 California Class. Accordingly, the records maintained by Defendants are inaccurate with respect
19 to the number of hours worked, and, correspondingly, the amount of wages owed to and/or paid
20 to Named Plaintiff and the California Class.

21 71. As a proximate result of the above mentioned violations, Named Plaintiff and the
22 California Class have been damaged in an amount according to proof at time of trial, and seek a
23 civil penalty be imposed against Defendants in accordance with California Labor Code Section
24 2699.5.

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26 ///

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28 ///

SEVENTH CAUSE OF ACTION BY THE CALIFORNIA CLASS

Unfair Competition

(Cal. Bus. & Prof. Code § 17200 *et seq.*)

72. Named Plaintiff incorporates by reference paragraph 1 through 71, as though set forth fully herein.

73. Defendants' violations of the Employment Laws and Regulations as alleged herein, including Defendants' failure to provide breaks to Named Plaintiff and the California Class, and policies that required Named Plaintiff and the California Class to perform off-the-clock work, constitute unfair business practices in violation of California Business & Professional Code Section 17200, *et seq.*

74. Defendants' violations of the Employment Laws and Regulations constitute a business practice because it was done repeatedly, over a significant period of time, and in a systematic manner to the detriment of Named Plaintiff and the California Class.

75. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Named Plaintiff, the California Class, and members of the public. Defendants should be made to account for and restore such monies to Named Plaintiff and the California Class.

76. Defendants' unfair business practices entitle Named Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for and restore unlawfully withheld compensation to the Named Plaintiff and California Class.

JURY DEMAND

77. Named Plaintiff hereby demands a jury trial on all issues and causes of action.

PRAYER FOR RELIEF

Wherefore, Named Plaintiff prays for relief individually and on behalf of all others similarly situated as follows:

- 1. Designation of this action as a collective action on behalf of the Nationwide Class (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the Nationwide Class, apprising them of the pendency

1 of this action, and permitting them to assert timely FLSA claims in this action by filing
2 individual Consent to Sue forms pursuant to 29 U.S.C. § 216 (b);

- 3 2. Designation of Named Plaintiff as Representative of the Nationwide Class;
4 3. Certification of this action as a class action on behalf of the California Class;
5 4. Designation of Named Plaintiff as Representative of the California Class;
6 5. For general damages in amounts according to proof and in no event in an amount less
7 than the jurisdictional limit of this court.
8 6. For restitution of all monies due to Named Plaintiff from the unlawful business practices
9 of Defendant;
10 7. For waiting time penalties pursuant to Labor Code §§ 203 and 206;
11 8. For penalties pursuant to Labor Code §§ 201, 226, 556, 1194, 1194.2, 2669.5, 2802,
12 1174(d), and 2699, and any and all other Labor Code Sections herein mentioned which
13 provide for penalties as a result of the above-mentioned alleged conduct;
14 9. For pre-judgment and post-judgment interest as provided by law;
15 10. For costs of suit incurred herein and attorneys' fees pursuant to Labor Code §§ 218.5 and
16 226 and other provisions of the Labor Code and 29 U.S.C. § 216;
17 11. For such other and further relief as the Court deems fair and just.

18 Respectfully submitted,

19 Dated: December 29, 2011

HOFFMAN EMPLOYMENT LAWYERS, LLP

20 /S/

21 MICHAEL HOFFMAN

22 Attorney for Plaintiffs
23
24
25
26
27
28

EXHIBIT A

"EXHIBIT A"


Consent to sue under the Fair Labor Standards Act (FLSA)

I work or worked for Nike et al. at some point after December 28, 2007 as a Sales Associate with the primary duties of providing service to customers. I was required to be physically searched before and after my shift without compensation.

I choose to participate in the FLSA collective action titles *Proctor et al. v. Nike et al.* filed in the Northern District of California to recover unpaid overtime pay under the federal Fair Labor Standards Act ("FLSA") 29 U.S.C. § 216 (b) and other relief under state and federal law.

I choose to be represented by the named plaintiff and counsel (Hoffman Employment Lawyers, LLP) in this action.

Print Name: Webster Proctor

Signature: 

Date Signed: 12/28/2011