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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
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18 PAYAL PATEL, an individual, on behalf of
 herself, on behalf of all persons similarly situated,
 19 and as the representative of the State of California,

20 Plaintiff,

21 v.

22 NIKE RETAIL SERVICES, INC., a Corporation;
 and DOES 1 through 50, inclusive,

23 Defendant.
 24

Case No. 3:14-cv-04781-RS

Assigned to the Hon. Richard Seeborg

**JOINT STIPULATION AND ~~[PROPOSED]~~
 ORDER REGARDING DETERMINATION
 OF NUMBER OF "AGGRIEVED
 EMPLOYEES" FOR PAGA CLAIMS**

Complaint Filed: November 25, 2013

1 Plaintiff Payal Patel (“Plaintiff”) and Defendant Nike Retail Services, Inc. (“Nike”) hereby
2 submit this Joint Stipulation Regarding Determination Of Number Of “Aggrieved Employees” For
3 PAGA Claims.

4 **RECITALS**

5 1. WHEREAS, on August 24, 2017, Nike filed a Motion To Strike Any Representative
6 PAGA Action Allegations In The Complaint Or, Alternatively, For Judgment On The Pleadings As To
7 The Representative PAGA Action (Dkt. No. 99);

8 2. WHEREAS, on September 28, 2017, the Court held a hearing on Nike’s pending motion
9 (Dkt. No. 102);

10 3. WHEREAS, Nike contends that there are approximately 101 Assistant Head Coaches in
11 the representative PAGA action, and Plaintiff contends that there are as few as three Assistant Head
12 Coaches in the representative PAGA action;

13 4. WHEREAS, at the hearing on Nike’s pending motion, the Court ordered the Parties to
14 “meet[] and confer[] and find out whether or not there is a path forward vis-a-vis each other on exchange
15 of information for purposes of ... giving [the Court] an answer” regarding the number of potentially
16 “aggrieved employees” subject to Plaintiff’s representative PAGA claims; and

17 5. WHEREAS, counsel for the Parties have met and conferred, and have agreed to use
18 electronic scheduling data, instead of daily zone charts, to show the scheduled days and approximate
19 scheduled hours for Assistant Head Coaches during the applicable PAGA period. The electronic
20 scheduling data is the same type of scheduling information available in the zone charts. Defendant
21 agrees not to later object to Plaintiff’s use of the electronic scheduling data on the grounds that the zone
22 chart data is more accurate and reliable.

23 **JOINT STIPULATION**

24 **NOW, THEREFORE,** the Parties stipulate as follows:

25 1. Nike shall produce electronic scheduling data showing the scheduled days and scheduled
26 hours for all Assistant Head Coaches during the applicable PAGA period of November 25, 2012 until
27 the present, with the exclusion of the 15 Assistant Head Coaches who submitted declarations stating that
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1 they never worked overtime during the PAGA period. Other declarations may be used for other
2 purposes.

3 2. Since Assistant Head Coaches do not clock in and out during their shifts, the Parties
4 agree that there are no other categories of documents that are more accurate in showing the actual hours
5 worked and actual days worked by Assistant Head Coaches than the electronic scheduling data.

6 3. Nike shall produce the electronic scheduling data within 30 days from the date of the
7 Court's order on this joint stipulation.

8 4. The Parties agree that no further discovery by Plaintiff shall be needed or requested to
9 determine the potential number of "aggrieved employees" who could be included as part of Plaintiff's
10 PAGA claims, and that there shall be no additional production of daily zone charts.

11 5. Plaintiff's expert shall review the daily recap emails produced by Nike and compare them
12 to the electronic scheduling data produced by Nike, in order to determine which Assistant Head Coaches
13 sent an email following eight hours of scheduled work and are, therefore, potentially "aggrieved
14 employees."

15 6. Plaintiff's expert shall prepare a report detailing the number of Assistant Head Coaches
16 who are "aggrieved employees." This report is to be prepared and produced to Nike no later than 60
17 days following the production of electronic scheduling data. Plaintiff's expert's report shall contain the
18 name of each "aggrieved" Assistant Head Coach, as well as each date and time, for each employee,
19 where a daily recap email was sent following eight hours of scheduled work.

20 7. If Nike requests, Plaintiff's expert shall be available for deposition within 30 days
21 following the date of production of the expert report.

22 8. Nike may thereafter raise any objections regarding the number of potentially "aggrieved
23 employees" as determined by Plaintiff's expert. Nike, however, will not object regarding the number of
24 potentially "aggrieved employees" on the basis that the zone charts contained data which were more
25 accurate and reliable than the data contained in the electronic scheduling data. Alternatively, Nike may
26 stipulate to the number of potentially "aggrieved employees" as determined by Plaintiff's expert.

27 9. To the extent the scheduling data is also used to calculate PAGA civil penalties, Nike will
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1 not object to the use of the scheduling data on the grounds that the zone charts contained scheduling data
2 which was more accurate and reliable than the data contained in the electronic scheduling data.

3 10. The Parties will subsequently file a Stipulation and [Proposed] Order stating: (i) the
4 agreed-upon number of potential “aggrieved employees”; or (ii) if the Parties do not agree on the
5 number of potential “aggrieved employees,” the Parties’ respective positions regarding the number of
6 potential “aggrieved employees.” The Court will be able to rely on this Stipulation when analyzing the
7 number of potential “aggrieved employees” and for purposes of ruling on a subsequent Motion To Strike
8 Any Representative PAGA Action Allegations In The Complaint Or, Alternatively, For Judgment On
9 The Pleadings As To The Representative PAGA Action, to be filed by Nike.

10 11. Should the Parties fail to reach a Stipulation on the number of “aggrieved employees”
11 following the production of electronic scheduling data and the expert report, the Parties shall request a
12 case management conference for final determination by the Court.

13 12. The case management conference set for November 9, 2017 shall be vacated.

14 **IT IS SO STIPULATED.**

15 DATED: November 6, 2017

SEYFARTH SHAW LLP

16 By: /s/ Michael Afar

17 Jon D. Meer
18 Sheryl L. Skibbe
19 Michael Afar
Attorneys for Defendant
NIKE RETAIL SERVICES, INC.

20 DATED: November 6, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK

21 By: /s/ Molly DeSario

22 Norman B. Blumenthal
23 Kyle R. Nordrehaug
24 Aparajit Bhowmik
25 Molly DeSario
26 Attorneys for Plaintiff
27 PAYAL PATEL
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1 **[PROPOSED] ORDER**

2 Based on the stipulation of the Parties, **IT IS HEREBY ORDERED** as follows:

3 1. Nike shall produce electronic scheduling data showing the scheduled days and scheduled
4 hours for all Assistant Head Coaches during the applicable PAGA period of November 25, 2012 until
5 the present, with the exclusion of the 15 Assistant Head Coaches who submitted declarations stating that
6 they never worked overtime during the PAGA period. Other declarations may be used for other
7 purposes.

8 2. Since Assistant Head Coaches do not clock in and out during their shifts, the Parties
9 agree that there are no other categories of documents that are more accurate in showing the actual hours
10 worked and actual days worked by Assistant Head Coaches than the electronic scheduling data.

11 3. Nike shall produce the electronic scheduling data within 30 days from the date of the
12 Court's order on this joint stipulation.

13 4. The Parties agree that no further discovery by Plaintiff shall be needed or requested to
14 determine the potential number of "aggrieved employees" who could be included as part of Plaintiff's
15 PAGA claims, and that there shall be no additional production of daily zone charts.

16 5. Plaintiff's expert shall review the daily recap emails produced by Nike and compare them
17 to the electronic scheduling data produced by Nike, in order to determine which Assistant Head Coaches
18 sent an email following eight hours of scheduled work and are, therefore, potentially "aggrieved
19 employees."

20 6. Plaintiff's expert shall prepare a report detailing the number of Assistant Head Coaches
21 who are "aggrieved employees." This report is to be prepared and produced to Nike no later than 60
22 days following the production of electronic scheduling data. Plaintiff's expert's report shall contain the
23 name of each "aggrieved" Assistant Head Coach, as well as each date and time, for each employee,
24 where a daily recap email was sent following eight hours of scheduled work.

25 7. If Nike requests, Plaintiff's expert shall be available for deposition within 30 days
26 following the date of production of the expert report.

27 8. Nike may thereafter raise any objections regarding the number of potentially "aggrieved
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1 employees” as determined by Plaintiff’s expert. Nike, however, will not object regarding the number of
2 potentially “aggrieved employees” on the basis that the zone charts contained data which were more
3 accurate and reliable than the data contained in the electronic scheduling data. Alternatively, Nike may
4 stipulate to the number of potentially “aggrieved employees” as determined by Plaintiff’s expert.

5 9. To the extent the scheduling data is also used to calculate PAGA civil penalties, Nike will
6 not object to the use of the scheduling data on the grounds that the zone charts contained scheduling data
7 which was more accurate and reliable than the data contained in the electronic scheduling data.

8 10. The Parties will subsequently file a Stipulation and [Proposed] Order stating: (i) the
9 agreed-upon number of potential “aggrieved employees”; or (ii) if the Parties do not agree on the
10 number of potential “aggrieved employees,” the Parties’ respective positions regarding the number of
11 potential “aggrieved employees.” The Court will be able to rely on this Stipulation when analyzing the
12 number of potential “aggrieved employees” and for purposes of ruling on a subsequent Motion To Strike
13 Any Representative PAGA Action Allegations In The Complaint Or, Alternatively, For Judgment On
14 The Pleadings As To The Representative PAGA Action, to be filed by Nike.

15 11. Should the Parties fail to reach a Stipulation on the number of “aggrieved employees”
16 following the production of electronic scheduling data and the expert report, the Parties shall request a
17 case management conference for final determination by the Court.

18 12. The case management conference set for November 9, 2017 shall be vacated.

19 **IT IS SO ORDERED.**

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21 DATED: 11/7/17

22
23 SIGNED:  _____

24 Hon. Richard Seeborg
25 Judge for the United States District Court
26 for the Northern District of California
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