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Attorneys for Plaintiff Nike, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NIKE USA, INC., an Oregon corporation,

Case No. 3:16-cv-00743-SB

Plaintiff,

v.

**PLAINTIFF NIKE USA, INC.’S FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS**

BORIS BERIAN, an individual California
resident,

Defendant.

Pursuant to Fed. R. Civ. P. 26 and 34, plaintiff Nike USA, Inc. (“Nike”) requests that Defendant Boris Berian produce for inspection and copying the documents specified on or before June 13, 2016 at the offices of Stoel Rives LLP, 760 SW Ninth Avenue, Suite 3000, Portland, Oregon, or at such other time and place as mutually agreed upon by counsel.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions shall apply to plaintiff Nike’s requests for production:

1. “Communication” means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and any notes or memoranda memorializing such communications. It includes, but is not limited to, email, cellular text messages, instant messaging conversations, iMessages, “WhatsApp” Communications, faxes, letters, posts on social media such as Twitter, Instagram, Facebook, Snapchat, and notes of oral Communications. It includes, but is not limited to, emails from an individual to himself or with any third-parties.

2. “Related to,” “relate to,” or “relating to” means referring to, describing, evidencing, constituting, containing, concerning, identifying, consisting of, pertaining to, dealing with, discussing, reflecting, supporting, or having a logical or factual connection with the matter at issue.

3. “Document” shall have the broadest possible meaning under the applicable rules, and includes “documents or electronically stored information” and “tangible things” under Federal Rule of Civil Procedure 34. A draft or non-identical copy is a separate document within the meaning of this term.

4. The word “Person” means any natural or artificial person, including business entities and other legal entities.

5. “Boris Berian” refers to Defendant Boris Berian.

6. “You,” “your,” and “Defendant” refers to Boris Berian.

7. “Merhawi Keflezighi” refers to Boris Berian’s agent.

8. “New Balance” refers to New Balance Athletics, Inc. and any of its agents, representatives, or anyone else acting, or who has acted, on its behalf.

9. "Nike" refers to Plaintiff Nike, Inc.
10. The "2015 Contract" refers to the June 17, 2015 Track & Field Contract between Boris Berian and Nike.
11. "Brenda Martinez" refers to Brenda Martinez, a professional middle distance runner and co-founder of the Big Bear Track Club.
12. "Carlos Handler" refers to Carlos Handler, Big Bear Track Club Coach.
13. "Big Bear Track Club" refers to Big Bear Track Club, based in Big Bear Lake, California, and any of its agents, representatives, or anyone else acting, or who has acted, on its behalf, including Brenda Martinez and/or Carlos Handler.
14. This request seeks any and all documents generated between November 1, 2015 and the present.
15. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.
16. The use of the word "including" shall be construed to mean "without limitation."
17. Reference to the singular in any of these requests shall also include a reference to the plural, and reference to the plural shall include a reference to the singular.
18. The documents requested herein shall be produced as they are kept in the usual course of business or shall be organized and labeled according to the number of the document request.
19. If a document responsive to any of the following requests is withheld from production on the basis of privilege or otherwise, You are required to provide a privilege log setting forth, for each Document withheld, the following information: (1) the type of Document (e.g., letter, email, text message); (2) the date the document was prepared or the date of any

meeting or Communication reflected in the Document; (3) the author of the Document; (4) all recipients of the Document or participants in the meeting or Communication; (5) a description sufficient to substantiate the claim of privilege; and (6) the privilege asserted.

20. If any document within the scope of these Requests has been lost or destroyed, You are required to provide: (1) the date and source of the Document; (2) a description of the Document's subject matter; (3) the name of the recipient of the Document; (4) the date the Document was destroyed, the person who ordered or authorized such destruction, the reason for the Document's destruction, and the policy or authority for the same; and (5) the custodian of the Document on the date of destruction.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All communications between Boris Berian or Merhawi Keflezighi and any other person or entity, including, but not limited to, New Balance, Nike, Big Bear Track Club, Brenda Martinez, or Carlos Handler, related to any potential or actual endorsement relationship between Boris Berian and New Balance, including communications regarding the impact of Mr. Berian's contractual relationship with Nike on any potential contractual relationship with New Balance.

RESPONSE:

REQUEST NO. 2: All offers, proposed or actual term sheets, proposed, draft or executed contracts, or other documents related to any potential or actual endorsement relationship between Boris Berian, either individually or as a member of Big Bear Track Club, and New Balance.

RESPONSE:

REQUEST NO. 3: All communications between Boris Berian or Merhawi Keflezighi and any other person or entity, including, but not limited to, New Balance, Nike, Big Bear Track Club,

Brenda Martinez, or Carlos Handler, related to the 2015 Contract, the right of first refusal provision (Section 5) in that contract, and/or whether Nike exercised its right of first refusal under that contract.

RESPONSE:

REQUEST NO. 4: All documents relating to any payments made by New Balance to Boris Berian, either directly or as a share of any payments made by New Balance to Big Bear Track Club.

RESPONSE:

DATED: June 3, 2016.

STOEL RIVES LLP

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