

1 Larry W. Lee (State Bar No. 228175)
 lwlee@diversitylaw.com
 2 Kristen Agnew (State Bar No. 247656)
 kagnew@diversitylaw.com
 3 Nicholas Rosenthal (State Bar No. 268297)
 nrosenthal@diversitylaw.com
 4 Max W. Gavron (State Bar No. 291697)
 mgavron@diversitylaw.com
 5 Kwanporn “Mai” Tulyathan (State Bar No. 316704)
 ktulyathan@diversitylaw.com
 6 **DIVERSITY LAW GROUP, A Professional Corporation**
 515 S. Figueroa St., Suite 1250
 7 Los Angeles, CA 90071
 (213) 488-6555
 8 (213) 488-6554 facsimile

9 Attorneys for Plaintiff and the Certified Class

10 *[ADDITIONAL COUNSEL ON THE NEXT PAGE]*

11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 ISAAC RODRIGUEZ, as an individual
 15 and on behalf of all others similarly
 16 situated,

17 Plaintiff,

18 v.

19 NIKE RETAIL SERVICES, INC., an
 Oregon corporation; and DOES 1 through
 20 50, inclusive,

21 Defendants.
 22

Case No.: 5:14-CV-1508 BLF

23 **~~[PROPOSED]~~ ORDER GRANTING**
 24 **PLAINTIFF’S MOTION FOR**
 25 **PRELIMINARY APPROVAL OF CLASS**
 26 **ACTION SETTLEMENT**

27 Date: September 30, 2021
 28 Time: 9:00 a.m.
 Courtroom: 3, 5th Floor

1 William L. Marder (State Bar No. 170131)
2 bill@polarislawgroup.com
3 **Polaris Law Group**
4 501 San Benito Street, Suite 200
5 Hollister, CA 95023
6 Tel: (831) 531-4214
7 Fax: (831) 634-0333

6 Dennis S. Hyun (State Bar No. 224240)
7 dhyun@hyunlegal.com
8 **HYUN LEGAL, APC**
9 515 S. Figueroa St., Suite 1250
10 Los Angeles, CA 90071
11 (213) 488-6555
12 (213) 488-6554 facsimile

10 Attorneys for Plaintiff and the Certified Class

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROPOSED ORDER

1
2 Plaintiff Isaac Rodriguez (“Plaintiff” or “Class Representative”), having made an
3 application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a) preliminarily
4 approving the settlement of the litigation pursuant to the Joint Stipulation of Class Action
5 Settlement and Release (the “Agreement”); (b) certifying the Settlement Class for purposes of
6 proceedings in connection with the final approval of the Agreement; (c) approving the form of
7 Notice of Class Action Settlement (“Class Notice”) and directing the manner of delivery thereof;
8 (d) approving Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron and Mai
9 Tulyathan of Diversity Law Group, William L. Marder of Polaris Law Group, and Dennis S.
10 Hyun of Hyun Legal as Class Counsel and Plaintiff as Class Representative.

11 IT IS HEREBY ORDERED THAT:

12 1. All defined terms contained herein shall have the same meaning as set forth in the
13 Agreement executed by the Parties and filed with this Court.

14 2. The Agreement is hereby PRELIMINARILY APPROVED as appearing on its
15 face to be fair, reasonable, and adequate and to have been the product of serious, informed, and
16 extensive arm’s-length negotiations among the Plaintiff and Defendant Nike Retail Services, Inc.
17 (“Defendant” or “Nike”) (Plaintiff and Defendant collectively referred to as the “Parties”). In
18 making this preliminary finding, the Court considered the nature of the claims, the relative
19 strength of Plaintiff’s claims, the amounts and kinds of benefits paid in settlement, the allocation
20 of settlement proceeds among the class members, and the fact that a settlement represents a
21 compromise of the Parties’ respective positions rather than the result of a finding of liability at
22 trial. The Court further preliminarily finds that the terms of the Agreement have no obvious
23 deficiencies and do not improperly grant preferential treatment to any individual class member.

24 3. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), the Court
25 conditionally certifies the Settlement Class defined as the following:

26 All current and former non-exempt/hourly retail store employees of
27 Defendant who worked in California at any time from February 25,
28 2010 through and including November 15, 2019.

The Court finds preliminarily, and for purposes of proceeding pursuant to Fed. R. Civ. P.

1 Rule 23(e), that the number of class members is sufficiently numerous, the class members are
2 ascertainable based on the Defendant’s records, the Plaintiff’s claims are typical of those in the
3 class, and that there is adequate and fair representation. Accordingly, the Settlement Class is
4 hereby CERTIFIED for the purposes of the Settlement pursuant to Fed. R. Civ. P. 23(e).

5 4. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as Class Counsel
6 for the Settlement Class Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron
7 and Mai Tulyathan of Diversity Law Group, William L. Marder of Polaris Law Group, and
8 Dennis S. Hyun of Hyun Legal. The Court finds that Class Counsel collectively have extensive
9 experience and expertise in prosecuting wage and hour class actions.

10 5. Plaintiff is approved as the class representative for the Settlement Class Members.

11 6. The Court finds on a preliminary basis that the proposed settlement described in
12 the Agreement (including the monetary provisions, the plan of allocation, the release of claims,
13 the proposed award of attorneys’ fees and costs and the class representative enhancement
14 payment) falls within the “range of reasonableness” and therefore grants preliminary approval of
15 the Agreement. Based on a review of the papers submitted by the Parties, the Court finds that the
16 Agreement is the result of extensive arm’s-length negotiations conducted after Class Counsel had
17 adequately investigated the claims and became familiar with the strengths and weaknesses of
18 those claims. The assistance of an experienced neutral mediator during the settlement process
19 supports the Court’s conclusion that the Agreement is non-collusive.

20 7. The Court hereby APPROVES Phoenix Settlement Administrators as the
21 Settlement Administrator for the purposes of this settlement.

22 8. A hearing (the “Final Approval and Fairness Hearing”) is hereby SCHEDULED to
23 be held before the Court on January 27, 2022, at 9:00 a.m. for the following purposes:

- 24 a. to finally approve the Settlement as fair, reasonable, and adequate and
25 direct its consummation pursuant to the terms of the Settlement Agreement;
- 26 b. to determine whether Class Counsel and Plaintiff adequately represented
27 the Settlement Class for the purpose of entering into and implementing the
28 Agreement;
- c. to re-confirm the appointment of the Settlement Administrator and find that

1 the Settlement Administrator has fulfilled its duties under the Settlement to date;

2 d. to determine whether the Class Notice (i) constituted the best practicable

3 notice; (ii) constituted notice that was reasonably calculated, under the

4 circumstances, to apprise Settlement Class Members of the pendency of the

5 Action, and their right to exclude themselves from or object to the proposed

6 settlement and to appear at the Final Approval Hearing; (iii) was reasonable and

7 constituted due, adequate, and sufficient notice to all persons entitled to receive

8 notice; and (iv) met all applicable requirements of Federal Rule of Civil Procedure

9 23(c)(2), due process, and any other applicable rules or law;

10 e. to approve the Opt-Out List and determine that the Opt-Out List is a

11 complete list of all Settlement Class Members who have timely and properly

12 requested exclusion from the Settlement Class and, accordingly, shall neither share

13 in nor be bound by the Final Approval order and Judgment;

14 f. to direct that the Final Approval order and Judgment of dismissal shall be

15 final and entered forthwith;

16 g. without affecting the finality of the Final Approval order and Judgment, to

17 direct that the Court retain continuing jurisdiction over Plaintiff, the Settlement

18 Class, and Defendant as to all matters concerning the administration,

19 consummation, and enforcement of this Settlement Agreement;

20 h. to adjudge that, as of the Final Approval Date, Plaintiff, and all Settlement

21 Class Members who have not been excluded from the Settlement Class as

22 provided in the Opt-Out List approved by the Court, and their Legally Authorized

23 Representatives, heirs, estates, trustees, executors, administrators, principals,

24 beneficiaries, representatives, agents, assigns, and successors, and/or anyone

25 claiming through them or acting or purporting to act for them or on their behalf,

26 regardless of whether they have received actual notice of the proposed Settlement,

27 have conclusively compromised, settled, discharged, and released the Named

28 Plaintiff's General Released Claims (in the case of Plaintiff) and Settlement Class

Members' Released Claims (in the case of the Settlement Class Members) against

1 Converse and the Released Parties, and are bound by the provisions of the
2 Agreement;

3 i. to declare the Agreement and the Final Approval order and Judgment be
4 binding on, and have res judicata and preclusive effect as to all pending and future
5 lawsuits or other proceedings: (i) that encompass the Named Plaintiff's General
6 Released Claims and that are maintained by or on behalf of Plaintiff and/or his
7 Legally Authorized Representatives, heirs, estates, trustees, executors,
8 administrators, principals, beneficiaries, representatives, agents, assigns, and
9 successors, and/or anyone claiming through them or acting or purporting to act for
10 them or on their behalf, and (ii) that encompass the Settlement Class Members'
11 Released Claims and that are maintained by or on behalf of any Settlement Class
12 Member who has not been excluded from the Settlement Class as provided in the
13 Opt-Out List approved by the Court and/or their Legally Authorized
14 Representatives, heirs, estates, trustees, executors, administrators, principals,
15 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
16 claiming through them or acting or purporting to act for them or on their behalf,
17 regardless of whether the Settlement Class Member previously initiated or
18 subsequently initiates individual litigation or other proceedings encompassed by
19 the Settlement Class Members' Released Claims, and even if such Settlement
20 Class Member never received actual notice of the Action or of the Settlement;
21 j. to determine that the Agreement and the Settlement provided for herein,
22 and any proceedings taken pursuant thereto, are not, and should not in any event
23 be offered, received, or construed as evidence of, a presumption, concession, or an
24 admission by any Party of liability or non-liability or of the certifiability or non-
25 certifiability of a litigation class, or of any misrepresentation or omission in any
26 statement or written document approved or made by any Party; provided, however,
27 that reference may be made to the Agreement and the Settlement provided for
28 herein in such proceedings as may be necessary to effectuate the provisions of the
Agreement, as further set forth in the Agreement;

1 k. to order the preliminary approval of the Settlement, certification of the
2 Settlement Class and final approval of the proposed Settlement, and all actions
3 associated with them, were undertaken on the condition that they shall be vacated
4 if the Settlement Agreement is terminated or disapproved in whole or in part by
5 the Court, or by any appellate court and/or other court of review, in which event
6 the Agreement and the fact that it was entered into shall not be offered, received,
7 or construed as an admission or as evidence for any purpose, including but not
8 limited to an admission by any Party of liability or non-liability or of any
9 misrepresentation or omission in any statement or written document approved or
10 made by any Party, or of the certifiability of a litigation class, as further provided
11 in this Settlement Agreement;

12 l. to authorize the Parties, without further approval from the Court, to
13 mutually agree to and adopt such amendments, modifications, and expansions of
14 this Agreement, including all Exhibits hereto, as (i) shall be consistent in all
15 material respects with the Final Approval order and (ii) do not limit the rights of
16 Settlement Class Members; and

17 m. to rule upon such other and further provisions consistent with the terms of
18 the Agreement to which the Parties expressly consented in writing.

19 9. The form of Class Notice is hereby APPROVED. No later than fourteen (14)
20 calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement
21 Administrator with the Class Information for purposes of preparing and mailing the Class Notice
22 to Settlement Class Members. The Class Information shall be confidential. The Settlement
23 Administrator shall not provide the Class Information to Class Counsel or Plaintiff or any third
24 party, or use the Class Information or any information contained therein for any purpose other
25 than to administer this Settlement. Specifically, for each Class Member, Defendant will provide
26 the Settlement Administrator with data Microsoft Excel spreadsheet and shall include, if possible,
27 for each Settlement Class Member: full name, last known mailing address, last four digits of the
28 social security number, and Shifts Worked (“Shifts Worked” means the best approximation of the
total number of shifts a Settlement Class Member worked for Defendant as a non-exempt/hourly

1 employee from February 25, 2010 through and including November 15, 2019, based on the
2 records and data maintained by Defendant). No more than thirty (30) calendar days after entry of
3 the Preliminary Approval Order, the Settlement Administrator shall send a copy of the Class
4 Notice by U.S. mail to each Settlement Class Member. Before the initial mailing of the Class
5 Notice, the Settlement Administrator shall make a good-faith attempt to obtain the most-current
6 names and postal mail addresses for all potential Settlement Class Members to receive such postal
7 mail, including (1) cross-checking the names and/or postal mail addresses it received from
8 Defendant, and (2) reviewing the addresses with the National Change of Address Database. If
9 any Class Notice sent via U.S. mail to any Settlement Class Member is returned to the Settlement
10 Administrator with a forwarding address, the Settlement Administrator shall forward the postal
11 mailing to that address. If the Settlement Administrator is not provided a forwarding address, the
12 Settlement Administrator shall attempt to locate a current mailing address for the Class Member
13 by skip tracing using the Class Member's social security number and will mail the Class Notice to
14 the updated address identified. In the event that any Class Notice is returned as undeliverable a
15 second time, no further efforts shall be required. The Settlement Administrator shall maintain a
16 log detailing the instances Class Notices are returned as undeliverable.

17 9. The Court finds that the Class Notice constitute the best notice practicable under
18 the circumstances and are in full compliance with the laws of the State of California, the United
19 States Constitution, and the requirements of due process. The Court further finds that the notice
20 fully and accurately inform the Settlement Class Members of all material elements of the
21 proposed settlement, of the Settlement Class Members' right to dispute their share of the
22 settlement, of the Settlement Class Members' right to be excluded from the Settlement Class, and
23 of each Settlement Class Member's right and opportunity to object to the Settlement.

24 10. The Court hereby APPROVES the proposed Exclusion/Written Objection
25 Deadline of forty-five (45) calendar days from the initial mailing of the Class Notice to
26 Settlement Class Members.

27 11. The Court hereby APPROVES the proposed procedure for opting out of the
28 Settlement Class. To be effective, such a request to opt out must include the Settlement Class
Member's name, address, and telephone number; a clear and unequivocal statement that the

1 Settlement Class Member wishes to be excluded from the Settlement Class; and the signature of
2 the Settlement Class Member. The date of the postmark on the return-mailing envelope to the
3 Settlement Administrator shall be the exclusive means used to determine whether a request for
4 exclusion has been timely submitted. Any member of the Settlement Class who requests
5 exclusion from the settlement will not be entitled to any share of the settlement and will not be
6 bound by the Agreement or have any right to object, appeal or comment thereon. Members of the
7 Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all
8 terms of the Agreement and the Order and Final Judgment, regardless of whether they otherwise
9 have requested exclusion from the settlement.

10 12. All reasonable costs of settlement administration undertaken by the Settlement
11 Administrator, including the mailing of Class Notice, shall be paid for as provided in the
12 Agreement.

13 13. All written objections and supporting papers must be submitted to the Court either
14 by mailing them to the Class Action Clerk, United States District Court for the Northern District
15 of California, San Jose Courthouse, Courtroom 3 - 5th Floor, 280 South 1st Street, San Jose, CA
16 95113, or by filing them in person at any location of the United States District Court for the
17 Northern District of California, no later than the Exclusion/Written Objection Deadline. The date
18 of the postmark on the return-mailing envelope or the filing date (respective of the method used)
19 shall be the exclusive means used to determine whether an objection has been timely submitted.
20 A written objection must contain at least the following: (i) the objector's full name, address,
21 telephone number, and signature; (ii) a clear reference to the Action; (iii) a statement of the
22 specific legal and factual basis for each objection argument; and (iv) a statement whether the
23 objecting person or entity intends to appear at the Final Approval Hearing, either in person or
24 through counsel and, if through counsel, a statement identifying that counsel by name, bar
25 number, address, and telephone number. All objections shall be signed by the objecting
26 Settlement Class Member, even if the Settlement Class Member is represented by counsel.
27 Settlement Class Members who fail to make objections in the manner specified above shall be
28 deemed to have waived any objections and shall be foreclosed from making any objections
(whether by appeal or otherwise) to the Settlement. Any Settlement Class Member who submits

1 a timely written objection have the right to appear at the Final Approval/Settlement Fairness
2 Hearing in order to present his or her objection to the Court orally, but is not required to attend.
3 No Settlement Class Member may appear at the Final Approval/Settlement Fairness Hearing
4 unless he or she has filed a written objection that complies with the procedures provided in this
5 paragraph. Settlement Class Members who submit a request for exclusion are not entitled to
6 object to the Settlement.


7 14. It is further ordered that pending further order of this Court, all proceedings in this
8 matter except those contemplated herein and as part of the settlement are stayed.

9 15. All Parties are otherwise ordered to comply with the terms of the Agreement.

10 16. Jurisdiction is hereby retained over this Action and the Parties to the Action, and
11 each of the Settlement Class Members for all matters relating to this Action, the Agreement,
12 including (without limitation) all matters relating to the administration, interpretation,
13 effectuation, and/or enforcement of the Agreement and this Order.

14 IT IS SO ORDERED.

15
16
17 Dated: September 30, 2021

18 By: 
19 Hon. Beth Labson Freeman
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28