

NOTICE OF CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

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

Defendants.

Case No. 5:14-CV-1508 BLF
Hon. Beth Labson Freeman

**IMPORTANT LEGAL NOTICE –
THIS LAWSUIT SETTLEMENT MAY
AFFECT YOUR RIGHTS**

A federal court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or don't act.

IMPORTANT: YOU ARE ENTITLED TO MONEY IF THE COURT APPROVES THE SETTLEMENT DESCRIBED HEREIN

Dear [Insert Full Name]:

THE RECORDS OF NIKE RETAIL SERVICES, INC. (“NIKE” OR “DEFENDANT”) SHOW YOU WERE EMPLOYED BY NIKE AS AN HOURLY-PAID EMPLOYEE IN CALIFORNIA AT SOME TIME BETWEEN FEBRUARY 25, 2010, AND NOVEMBER 15, 2019, AND YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT.

IT IS ESTIMATED THAT YOUR POTENTIAL PAYMENT UNDER THIS SETTLEMENT WOULD BE \$_____.

IMPORTANT: YOU WILL BE BOUND BY THIS SETTLEMENT AND YOUR RIGHTS WILL BE AFFECTED BY THIS LITIGATION UNLESS YOU EXCLUDE YOURSELF FROM THE CLASS AS EXPLAINED BELOW.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will receive a settlement payment. In exchange for this payment, you will give up any rights to sue Defendant separately for the same legal claims that were part of this settlement.
Exclude Yourself (Deadline: December 16, 2021)	If you ask to be excluded from the settlement, you will receive no payment for the settlement. You will, however, retain any rights to sue Nike separately for the same legal claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
Object To The Settlement (Deadline: December 16, 2021)	If you believe that the settlement is unfair, you can send a written objection to the Court about why you believe that the settlement is unfair. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and you will still receive a settlement payment. Objecting to the settlement will not exclude you from receiving a portion of the settlement.

YOUR RIGHTS AND OPTIONS - AND THE DEADLINES TO EXERCISE THEM - ARE EXPLAINED IN THIS NOTICE.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains the nature of this lawsuit, as well as a proposed settlement of this lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this class action lawsuit has been brought. The Court has conditionally certified a Class for settlement purposes comprised of:

All current and former non-exempt/hourly retail store employees of Nike Retail Services, Inc. who worked in California at any time from February 25, 2010, through and including November 15, 2019.

The Court has appointed Diversity Law Group, PC, Polaris Law Group, LLP and Hyun Legal, APC to act as Class Counsel.

WHAT IS THIS LAWSUIT ABOUT?

This settlement is the result of a lawsuit filed by Plaintiff Isaac Rodriguez (“Plaintiff”). On February 25, 2014, Plaintiff filed a Class Action Complaint against Nike in the Superior Court of the State of California, County of Santa Clara (the “Lawsuit”). Nike subsequently removed the case to the United States District Court for the Northern District of California, where it was assigned Case. No. 5:14-cv-1508-BLF.

In the lawsuit, Plaintiff brings class claims for violation of the California Labor Code based on Nike’s policy and practice of conducting security inspections of its employees after clocking out from their shifts and prior to leaving the store. Plaintiff’s Lawsuit alleges that this policy and practice was not compliant with California law, and that Nike owes unpaid wages and various penalties to its employees for the time spent waiting and undergoing said security inspections off-the-clock. Based on these class claims, Plaintiff seeks on behalf of all similarly situated current and former hourly retail store employees of Nike all unpaid wages, restitution, and related statutory penalties under California law.

Nike denied the allegations in the Lawsuit, and continues to deny, that it failed to comply with California law and the California Labor Code. In this regard, Nike maintains that its security inspections conducted at retail stores were compliant with California law, such that it properly compensated employees for all wages earned.

THE COURT HAS NOT RULED ON THE MERITS OF PLAINTIFF’S CLAIMS, NIKE’S DEFENSES, OR THE SUBSTANTIVE CONTENTIONS OF THE PARTIES. NO INFERENCES REGARDING THE MERITS OF THE LITIGATION SHOULD BE DRAWN FROM THE SENDING OF THIS NOTICE. THIS NOTICE IS NOT MEANT TO IMPLY THAT THERE HAS BEEN ANY VIOLATION OF LAW OR WRONGDOING BY ANY PARTY OR THAT A RECOVERY AFTER TRIAL COULD BE HAD IF THE LITIGATION IS NOT SETTLED.

SUMMARY OF THE SETTLEMENT

A. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Nike. Plaintiff thinks he would have prevailed on the merits of his claims at trial. Nike does not think Plaintiff would have won anything from trial because it has asserted legal and factual defenses to the claims. But there was no trial. Instead, both parties agreed to a settlement of the Lawsuit. As a result, both sides can avoid the costs, risks, and uncertainty of proceeding with trial, and the people affected from the Lawsuit will get monetary compensation. Plaintiff and Class Counsel believe that the settlement is fair, reasonable, adequate, and in the best interests of all members of the Class.

B. Who is in the Settlement Class?

All current and former non-exempt/hourly retail store employees who worked for Defendant in California at any time from February 25, 2010, through and including November 15, 2019, and who do not opt out of the settlement as explained below would become part of the “Settlement Class” (also referred to as a “Settlement Class Member”).

C. Who are the attorneys representing the Class?

<p><u>Class Counsel</u> DIVERSITY LAW GROUP, P.C. Larry W. Lee, State Bar No. 228175 lwlee@diversitylaw.com Kristen M. Agnew, State Bar No. 247656 kagnew@diversitylaw.com Nick Rosenthal, State Bar No. 268297 nrosenthal@diversitylaw.com Max Gavron, State Bar No. 291697 mgavron@diversitylaw.com Mai Tulyathan, State Bar No. 316704 ktulyathan@diversitylaw.com 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554</p>	<p><u>Class Counsel (cont’d)</u> HYUN LEGAL, APC Dennis S. Hyun, State Bar No. 224240 dhyun@hyunlegal.com 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554</p>
<p><u>Class Counsel (cont’d)</u> POLARIS LAW GROUP LLP William L. Marder, State Bar No. 170131 bill@polarislawgroup.com 501 San Benito Street, Suite 200 Hollister, California 95023 Telephone: (831) 531-4214 Facsimile: (831) 634-0333</p>	

D. What does the settlement provide?

The parties have agreed to settle the Lawsuit in exchange for the settlement amount of \$8,250,000.00 (“Total Settlement Amount”). This amount is inclusive of (1) individual settlement payments to the Settlement Class Members; (2) an enhancement payment of up to \$15,000.00 to Plaintiff for his efforts and work in prosecuting this Lawsuit on behalf of the class; (3) not more than \$2,750,000.00 in attorneys’ fees and not more than \$250,000.00 in litigation costs; and (4) claims administrator’s fees and expenses estimated to be \$69,750.00.

After deducting the class representative enhancement payment, attorneys’ fees, costs, and the claims administrator’s fees and expenses, it is estimated that a total of approximately \$5,165,250.00 (“Net Settlement Amount”) will be available to be distributed to the Settlement Class. The Settlement Class Member’s share of the Net Settlement Amount will be distributed to each class member who does not request exclusion from the settlement (“Individual Settlement Payment”).

Each Settlement Class Member who does not request exclusion (“Remaining Settlement Class Member”) shall be paid a base payment of \$10.00, plus an amount calculated in direct proportion to Nike’s best estimate of the Settlement Class Member’s Shifts Worked, as determined from the Class Information provided to the Settlement Administrator by Nike. To calculate the amount to be paid in proportion to Shifts Worked, the number of Remaining Settlement Class Members shall be multiplied by \$10.00 and the resulting amount shall be subtracted from the Net Settlement Amount, after which the remaining amount shall be deemed as the “Shifts Worked Settlement Amount.” Then, the Shifts Worked of all Remaining Settlement Class Members will be totaled (“Total Shifts Worked”). Each Remaining Settlement Class Member’s Shifts Worked will be divided by the Total Shifts Worked and multiplied against the Shifts Worked Settlement Amount. Finally, the resulting amount shall be added to the base payment of \$10.00 to each Remaining Settlement Class Member’s Individual Settlement Payment. The settlement amount you are estimated to receive is printed on the first page of this notice. It was calculated using this formula.

Settlement Class Members are **not** required to do anything to receive their Individual Settlement Payment. Thus, you do **not** need to submit any proof of a claim form. Instead, upon final approval of this settlement by the Court, your Individual Settlement Payment check will be mailed to you, unless you exclude yourself or opt out of the settlement according to the instructions below.

If any Remaining Settlement Class Member does not cash their settlement payment check within one hundred eighty (180) days after the settlement administrator mails the settlement payment check to the Remaining Settlement Class Member, all such uncashed amounts will be redistributed to those Remaining Settlement Class Members who received and cashed their Individual Settlement Payment check. Any portion of the settlement payments not cashed within one hundred eighty (180) days of the second distribution shall be paid to the *cy pres* beneficiary of the Settlement, Legal Aid At Work.

All Individual Settlement Payments paid to satisfy claims of those who do not request exclusion shall be allocated as follows: ten percent (10%) of which shall be issued as wages, less applicable withholdings and for which an IRS Form W-2 shall issue if required, ten percent (10%) of which shall be issued as interest and for which a IRS Form 1099-INT shall issue if required, and eighty percent (80%) of which shall be issued as penalties, for which an IRS Form 1099-MISC shall issue if required. Nike will be separately responsible for the employer-paid portion of any taxes arising from settlement payment amounts issued as wages, including the employer-paid portion of FICA, Medicare, FUTA, and SDI contribution, which shall not be paid from the Total Settlement Amount. Each Settlement Class Member shall be solely responsible for their share of taxes (federal, state, or local) owed as a result of any payments received under this settlement.

To ensure compliance with requirements imposed by the IRS, we inform you that any United States federal tax advice contained in this Notice was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. Class Counsel and Defendant’s Counsel do not purport this communication to constitute legal and/or tax advice.

E. What will I get?

The records of Nike indicate that, between February 25, 2010 through and including November 15, 2019, the total shifts you worked as a non-exempt/hourly employee is:

Shifts Worked 
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Based on this, it is estimated that your Individual Settlement Payment will be approximately \$_____.

If you dispute the shifts worked listed above, you must notify the settlement administrator in writing of this dispute within ten (10) days of your receipt of this Notice at the address listed below, and provide documents (e.g., payroll records) evidencing your claim. You can only submit a dispute if you do not exclude or opt out of the settlement. The settlement administrator’s determination of any dispute over the hours worked will be final and binding upon the Settlement Class Member.

F. What is the payment to the Class Representative?

Subject to Court approval, Plaintiff will be paid a “Service Award” in an amount up to fifteen thousand dollars (\$15,000.00) for his efforts and work in prosecuting this Lawsuit as the class representative, including providing valuable information and documents to Class Counsel, sitting for his deposition, providing Defendant with a general release of any claims he may have, as well as his willingness to accept the risk of paying Defendant’s attorneys’ fees and costs in the event of an unsuccessful outcome of this Lawsuit.

G. How will Class Counsel be paid?

Class Counsel will apply to the Court for an award of reasonable attorneys’ fees in an amount up one-third (1/3) of the Total Settlement Amount (up to \$2,750,000.00), and reasonable litigation costs of this Lawsuit of up to two hundred and fifty thousand dollars (up to \$250,000.00) (“Class Counsel Award”).

H. What are you giving up to get a payment or stay in the Class?

If you remain a part of this settlement, and if the Court grants final approval of the settlement, you will be deemed to have released or waived the claims listed below in **Section I** that arose any time during the period of February 25, 2010, through and including December 31, 2019 (referred to as the “Released Claims”). The release of claims set forth below in **Section I** which describes exactly the legal claims that you will give up if you do not exclude yourself from the Settlement Class, and will extend to Nike and its past, present and future divisions, affiliates, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies (the “Released Parties”).

If you do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into the release of claims below (Section I) and to have released your claims against the Released Parties. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

I. What are the Released Claims?

In consideration of the monetary sum provided by Defendant and upon final approval of this settlement by the Court, Plaintiff and the Settlement Class Members who have not been excluded from the Settlement Class, agree to forever release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties from the following claims (“Released Claims”): any and all claims under the wage and hour laws and regulations of the state of California that were or could have been asserted based on the facts pleaded in the Lawsuit or any amendments thereto, including but not limited to, all statutes mentioned in the Lawsuit and corresponding provisions of the relevant California Wage Order, including but not limited to California Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, 1197.1, and California Business and Professions Code sections 17200, *et seq.*, as related to claims for: overtime; minimum wage; waiting time penalties; restitution; statutory penalties; interest; injunctive relief; and attorneys’ fees, costs, and

expenses. The Settlement Class Members Released Claims are released from February 25, 2010, through and including December 31, 2019.

If you currently have a case pending, or plan to file a case based on the above claims, you must exclude yourself from this class action in order to proceed on your own. You will be solely responsible for the costs of hiring your own attorney and proceeding on your own. If you wish instead to receive the benefits of this settlement, and waive your right to proceed on your own, you should participate in this settlement, meaning do **not** exclude yourself from the Settlement.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed Settlement (the “Final Approval Hearing”) on January 27, 2022, at 9:00 a.m., in Courtroom 3 of United States District Court for the Northern District of California, San Jose Division, 280 South 1st Street, San Jose, CA 95113.

At the Final Approval Hearing, the Court will determine: (i) whether the Action should be finally certified as a class action solely and exclusively for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and if so, whether to enter a judgment fully and finally resolving Plaintiff’s and Settlement Class Members’ claims against Defendant; (iii) whether the Settlement Class Members should be bound by the terms of the Settlement, including the release of claims; (iv) the amount of the attorneys’ fees and litigation costs to be awarded to Class Counsel; and (v) the amount that should be awarded to Plaintiff as the Service Award.

At the Final Approval Hearing, the Court will rule on any written objections filed by Class Members, as well as arguments for and against the proposed Settlement. Assuming you do not elect to exclude yourself from the Settlement, you have a right to attend this hearing, but you are not required to do so. The Court has reserved the right to adjourn the Final Approval Hearing to consider any issue, without further notice of any kind. Please contact the settlement administrator or Class Counsel to confirm that the Final Approval Hearing date has not been changed.

You also have the right to hire an attorney to represent you, or to enter an appearance on your behalf and represent you at the hearing.

WHAT ARE YOUR OPTIONS?

OPTION 1 – REMAIN A SETTLEMENT CLASS MEMBER. IF YOU WISH TO REMAIN A SETTLEMENT CLASS MEMBER AND OBTAIN YOUR SHARE OF THE SETTLEMENT THAT YOU MAY BE ENTITLED TO RECEIVE, YOU DO NOT NEED TO DO ANYTHING OTHER THAN MAKE SURE THE SETTLEMENT ADMINISTRATOR HAS YOUR CURRENT ADDRESS. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. You will be bound by a judgment in this case, you will release your claims against Defendant, and you will not have the right to file your own lawsuit against Defendant for the same claims in a separate suit. If the Court approves the proposed settlement, you will automatically be mailed your Individual Settlement Payment. If the Court does not approve the settlement, the lawsuit will continue, and you may or may not be designated or redesignated as a Class Member at a later time. If your mailing address information is incorrect or you move, please provide your current address to the settlement administrator: Phoenix Settlement Administrators at P.O. Box 7208, Orange, CA 92863.

OPTION 2 – EXCLUDE YOURSELF FROM THE CLASS. YOU HAVE A RIGHT TO EXCLUDE YOURSELF (“OPT OUT”) FROM THE CLASS, BUT IF YOU CHOOSE TO DO SO, YOU WILL NOT RECEIVE ANY BENEFITS FROM THE PROPOSED SETTLEMENT AND YOU WILL NOT HAVE STANDING TO OBJECT TO THE SETTLEMENT. If you exclude yourself, you will not be bound by a judgment in this case, you will not release your claims against the Defendant, and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. If you want to exclude yourself from the Class, you must timely write to the settlement administrator to request that you be excluded from the settlement.

Your request for exclusion from the settlement must: (1) contain your full name, address and telephone number; (2) contain a clear statement that indicates that you want to be excluded from the settlement; (3) be signed by you; and (4) identify the case name and number (*RODRIGUEZ v. NIKE*, Case Number 5:14-CV-1508 BLF).

Your written request for exclusion must be mailed to the settlement administrator at: Phoenix Settlement Administrators at P.O. Box 7208, Orange, CA 92863. In order for you to timely and validly opt out and exclude yourself, your written request for exclusion must contain the information listed above, and be postmarked on or before December 16, 2021. Any requests for exclusion post-marked after this date or not received by the settlement administrator will have no force and effect, meaning that you will still remain a part of the Settlement Class.

Any Class Member who files a timely and valid request for exclusion will no longer be a member of the Settlement Class, be barred from objecting to the settlement, and will receive no benefits or payment from the settlement. If you exclude yourself, you can, at your own expense, pursue any claims that you may have against Defendant. Please note that you **cannot** both exclude yourself and object to the settlement.

OPTION 3 – REMAIN A CLASS MEMBER AND OBJECT TO THE SETTLEMENT. You can ask the Court to deny approval by filing a written objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object in writing.

Any objection to the proposed settlement must be in writing and must: (1) contain your full name, current address, telephone number and signature; (2) identify the case name and number (*Rodriguez v. Nike*, Case Number 5:14-CV-1508 BLF); (3) state with specificity the legal or factual grounds for your objection(s); and (4) state whether you intend to appear at the Final Approval Hearing, either in person or through your own attorney. You may include any supporting documents or papers, including without limitation, briefs, written evidence, and declarations, with your objection. Your written objection and/or supporting documents must be filed with the Court only, either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Courtroom 3 – 5th Floor, 280 South 1st Street, San Jose, CA 95113, or by filing them in person at any location of the United States District Court for the Northern District of California.

To be valid and effective, all objections to the approval of the Settlement must be postmarked to the Court, or filed in person, on or before December 16, 2021. **DO NOT CONTACT THE COURT**, except as provided here.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you choose to appear through your own attorney, you are responsible for hiring and paying that attorney. Any Class Member who fails to object to the proposed Settlement as described above will lose the right to object to it.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, approval papers, and other documents in this Lawsuit, by accessing <http://www.phoenixclassaction.com/>, by contacting Class Counsel at their contact information above, by contacting the settlement administrator at (800) 523-5773, by accessing the Court docket in this case (for a fee) through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

PLEASE DO NOT TELEPHONE THE COURT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.