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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NIKE USA, INC., an Oregon corporation,

Plaintiff,

v.

BORIS BERIAN, an individual California
resident,

Defendant.

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

**SECOND DECLARATION OF JOHN
EVANS**

**In Support Of Defendant Boris Berian's
Opposition To Nike's Motion For A
Temporary Restraining Order And
Order To Show Cause Why Preliminary
Injunction Should Not Issue**

I, John Evans, hereby declare as follows:

1) I am the General Manger of Running Sports Marketing for New Balance Athletics, Inc. I submit this declaration in support of Defendant Boris Berian's Opposition to Nike's Motion for Preliminary Injunction. The information I am providing is based on my personal knowledge, and if called and sworn as a witness I could and would testify competently to this information.

2) I provided an affidavit to the Court in the context of the hearing on a temporary restraining order Nike sought against Mr. Berian. I have read the Court's order on that motion, and hope to provide additional facts in this affidavit relevant to some of the issues the Court identified in its ruling.

3) On November 24, 2015, I spoke with Merhawi Keflezighi about his prospective client. He told me that he would soon be representing Boris Berian, and asked whether New Balance was interested in considering entering into an endorsement agreement with him. Prior to Mr. Berian signing with Nike, New Balance provided Mr. Berian with footwear and apparel in 2015, and I made a call on his behalf to help him get into the 2015 Adidas Grand Prix in New York City. I told Mr. Keflezighi that we were certainly interested.

4) The following day I received an email from Mr. Keflezighi. In it, he laid out "unique terms to consider to increase the chance of securing a deal." They included (quoting from the email):

- No reductions
- Guaranteed to be one of the top 10 T&F sponsored athletes under the brand
- Allow non-exclusivity [sic] in the following categories: Watches/ wearables, Sunglasses, compression socks
- Allow third party logo on the race uniform (Big Bear Track Club logo, or other non-competitive logo)
- New Balance being a sponsor of the Big Bear Track Club and sponsoring Boris as part of that deal.

5) On January 5, 2016, I emailed Mr. Keflezighi to find out if Mr. Berian wanted a proposal from us. Mr. Keflezighi responded affirmatively on the 11th, and I submitted New Balance's initial proposal on January 12th.

6) New Balance wanted to be very competitive in this term sheet because we understood that Mr. Berian was a sought-after athlete and would likely have a number of opportunities to enter into endorsement contracts. Nike is a competitor, and in preparing the term sheet I had every intention of competing aggressively for Mr. Berian. Nothing in the proposal was intended to preclude Nike from exercising its right of first refusal, although it certainly occurred to me that if we included terms we could live with that Nike was not willing to match, all the better.

7) Mr. Keflezighi emailed me the same day asking for a discussion about improving some of the terms. New Balance modified its proposal following my discussion with Mr. Keflezighi by adding bonuses if Mr. Berian achieved specified race times. Mr. Keflezighi told me shortly after that the proposal was acceptable and would be sent to Nike to consider. Mr. Keflezighi later sent me the email transmitting the proposal to Nike: He stated to Nike:

"I am now representing Boris Berian. New Balance has submitted an offer for Boris, which Boris finds agreeable. Pursuant to Section 5 of Boris' Nike agreement, I am submitting the New Balance offer to you. In addition to the financial terms and the lack of reductions, we do consider the affiliation clause in the contract a material element of the offer.

Please let me know if you have any questions or want to discuss over the phone."

8) I have read the letter from John Capriotti of Nike notifying Mr. Keflezighi that Nike "matches New Balance's offer" and will enter into a new contract based on the terms of that offer. Mr. Capriotti asked if New Balance omitted reductions from the offer. As Mr.

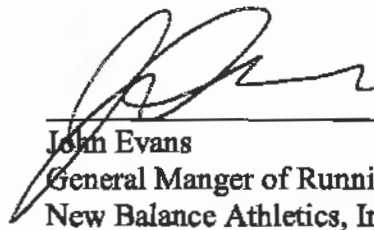
Keflezighi had already stated this in his email transmitting the term sheet to Nike, New Balance didn't include reductions. The lack of any reductions was a major part of our offer.

9) On February 14, 2016, Mr. Berian competed in New Balance shoes wearing Big Bear TC team clothing branded with New Balance and Big Bear logos. The next day, I understand that Nike provided Mr. Berian with the long-form contract which contained an affiliation clause, but also included performance reductions and a variety of other terms that were not in the New Balance proposal and would not have been in the contract.

10) I want to elaborate on what I meant in my first affidavit, and here, when I say the New Balance proposal did not contain a reduction provision. Nike points out that my affidavit only seems to discuss performance-based reductions. There were no reductions contemplated at all – not for performance, race attendance, or anything else. This is not unusual for New Balance, as a number of athletes have no reductions in their contracts. While some do have “participation” reductions, and a small number have both “performance” and “participation” reduction clauses in their contracts, I do not believe that we have reduced an athlete's compensation based on a reduction provision in my twenty-year career with the company.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 2016.



John Evans
General Manger of Running Sports Marketing
New Balance Athletics, Inc.