

**Per A. Ramfjord, OSB No. 934024**

per.ramfjord@stoel.com

**Kennon Scott, OSB No. 144280**

kennon.scott@stoel.com

STOEL RIVES LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

Telephone: (503) 224-3380

Facsimile: (503) 220-2480

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,

**SECOND DECLARATION OF BEN  
CESAR**

v.

BORIS BERIAN, an individual California  
resident,

Defendant.

---

I, Ben Cesar, hereby declare as follows:

1. I am currently North America Track and Field Athlete Manager for Nike, Inc. Nike, Inc.'s global sports marketing organization is responsible for seeking, building and establishing formal relationships with sports federations, professional sports leagues and elite professional athletes worldwide, primarily through negotiating endorsement and licensing agreements with professional athletes and sports properties. I submit this declaration in support of Nike USA, Inc.'s ("Nike") Motion for Preliminary Injunction. The following facts are within

my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. On January 22, 2016, I emailed Merhawi Keflezighi, Defendant Boris Berian's agent, a letter from John Capriotti, Nike, Inc. Global Director of Athletics. The letter agreed to match the offer from New Balance that Mr. Keflezighi had submitted to Nike on January 20 (the "New Balance Offer").

3. Mr. Capriotti's letter also asked Mr. Keflezighi to clarify whether the New Balance Offer had purposefully excluded reductions, and, if so, invited Mr. Keflezighi to submit written documentation on that point. However, the letter does not state that Nike's agreement to match the New Balance Offer was conditional on the inclusion of reductions. Had we wished to condition our commitment to match the New Balance Offer on the inclusion of reductions, we would have said so directly. We did not do that. Instead, we unambiguously stated that Nike "matches the New Balance Offer," and we included an attachment in which we matched the New Balance Offer word for word. The language seeking clarification merely sought to determine whether or not reductions were in fact included. It does not take away from the fact that Nike was then, and is now, committed to matching the New Balance offer, regardless of whether it includes reductions.

4. On January 27, 2016, I had a call with Mr. Keflezighi and Mr. Capriotti to discuss the New Balance Offer. Mr. Keflezighi highlighted the fact that the New Balance Offer included a provision that would allow Mr. Berian to wear the official kit of the Big Bear Track Club. Both Mr. Capriotti and I acknowledged the existence of that provision and the fact that Nike had matched it. At the time, however, Mr. Keflezighi did not indicate that the Big Bear Track Club was sponsored by New Balance or was going to be sponsored by New Balance. Had he done so,

I would have raised concerns internally about whether the provision was in fact enforceable. Nor did Mr. Keflezighi state or suggest that Nike had failed to match the New Balance Offer. At the end of the call, Mr. Keflezighi suggested that it would be good to have an additional call with Mr. Berian on the line.

5. On February 2, 2016, I had a second call with Mr. Keflezighi, Mr. Berian, and Mr. Capriotti. On that call Mr. Berian said that he had nothing against Nike, but he felt that he did not hear from Nike as often as his fellow runner, Brenda Martinez, heard from her New Balance sponsor. I explained that I was in regular contact with his coach, Carlos Handler, but would be happy to connect with him directly if that was what he preferred. Mr. Berian also said that his Nike shoes occasionally gave him issues, and I responded that I had never heard that before and asked what we could do to improve the situation. Mr. Keflezighi then suggested that the best thing would be to let Mr. Berian move to New Balance, which is what he would prefer to do. At the close of the call, Mr. Berian and Mr. Keflezighi agreed that they would talk further and get back to us. At no time during the February 2, 2016 call did Mr. Keflezighi or Mr. Berian suggest that Nike had failed to match any terms of the New Balance Offer.

6. Following the February 2, 2016 call, I did not hear anything further from Mr. Berian or Mr. Keflezighi. To move things along, I sent Mr. Keflezighi a draft form contract for his review that was intended to incorporate the terms of the New Balance Offer into a typical sponsorship agreement. Because Mr. Keflezighi had never provided documentation from New Balance as to whether or not New Balance intended to include reductions as part of its customary terms, I included them in the proposed draft. This was not intended in any way as a repudiation of Nike's commitment to match the New Balance Offer. Indeed, my cover email specifically noted that Nike was "looking forward to continuing [its] relationship" with Mr. Berian.



Moreover, as I previously indicated, Nike was committed to matching the New Balance Offer regardless of whether it included reductions. In this regard, my cover email also stated that the form contract was a draft “for [Mr. Keflezighi’s] review,” and I assumed that Mr. Keflezighi would provide me with a statement from New Balance on whether or not their offer included reductions.

7. Rather than commenting or responding in any way to the substance of the draft contract, Mr. Keflezighi responded in an email, noting that he and Mr. Berian had discussed the situation internally as they had agreed to do during the February 2, 2016 call, and that Mr. Berian “has expressed an interest not to resume a relationship with Nike.” Nothing in the email states or suggests that Nike had failed to match the New Balance Offer. Because it did not appear from this email that Mr. Berian was willing to honor his contractual obligations to Nike, Nike retained counsel who began further communications eventually leading to this action.

8. Even though the parties are now involved in litigation, Nike is committed to continuing its relationship with Mr. Berian. To that end, should the Court enter a preliminary injunction as requested, Nike will go forward and pay Mr. Berian according to terms of the parties agreement, as reflected in Nike’s January 22, 2016 match of the New Balance Offer, provided he competes in Nike apparel and footwear and refrains from endorsing any Nike competitor, on social media or elsewhere, or otherwise taking action contrary to the terms of Nike’s January 22, 2016 match.

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

Executed on June 21, 2016.



---

Ben Cesar  
North America Track & Field Athlete Manager  
Nike, Inc.