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12 individually, and on behalf of all others similarly  
13 situated, and the general public.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16 FANTASIA MCDONALD, an individual,  
17 on behalf of herself and all others similarly  
18 situated,

18 Plaintiffs,

19 v.

20 NIKE RETAIL SERVICES, INC., an  
21 Oregon corporation, and DOES 1-100,

22 Defendants.

CASE NO. **24STCV11650**

**CLASS ACTION COMPLAINT FOR**  
**DAMAGES AND INJUNCTIVE RELIEF**

1. Failure to Reasonably Accommodate Lactation, Failure to Provide Reasonable Advance Notice (Cal. Gov't Code § 12945(a)(3)(A); 2 Cal. Code Regs. § 11035(d), § 11049(a); Cal. Lab. Code §§ 1030, 1033)
2. Failure to Engage in Good-Faith Interactive Process to Reasonably Accommodate Lactation (Cal. Gov't Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B), § 11035)
3. Violation of Cal. Lab. Code §1030, et. seq.;
4. Violation of Cal. Lab. Code §226.7;
5. Violation of Cal. Lab. Code §226;
6. Waiting Time Penalties (Cal. Lab. Code §§201-203);
7. Unfair Competition in Violation of Unfair

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Competition Law (Cal. Bus. & Prof. Code  
§§ 17200, et seq.)

**DEMAND FOR JURY TRIAL**

1 Plaintiff FANTASIA MCDONALD (hereinafter referred to as “Plaintiff” or “Ms.  
2 McDonald”), hereby submits her Class Action Complaint (“Complaint”) against Defendants NIKE  
3 RETAIL SERVICES, INC., an Oregon corporation (hereinafter collectively referred to as “Nike” or  
4 “Defendants”) and DOES 1-100 on behalf of herself and the class of all other similarly situated  
5 current and former employees of Defendants. Plaintiff brings this action upon information and  
6 belief, except as to her own actions, the investigation of Plaintiff’s counsel, and the facts that are a  
7 matter of public record, as follows:

8 **SUMMARY OF CLAIMS**

9 1. This is a class action challenging Nike’s systemic failure to provide State mandated  
10 accommodations to postpartum and nursing female employees who have returned to work but need  
11 to pump breastmilk to feed their babies.

12 2. Breastfeeding is the best source of infant nutrition and contributes to maternal health.  
13 The World Health Organization (WHO) and the United Nations International Children’s Emergency  
14 Fund (UNICEF) recommend to exclusively breastfeed during the first six months of life and to  
15 continue breastfeeding with complementary foods at least until the age of 2. While some women  
16 cannot breastfeed, many choose to do so to provide necessary nutrition to their babies.

17 3. In addition to the FEHA requirement that California employers accommodate  
18 lactation, California’s Labor Code directs that employers provide lactating workers reasonable break  
19 time, a private space close to their work location that is shielded from view with a place to sit and an  
20 electrical source, a refrigerator to store breast milk, and a sink with running water. Cal. Labor Code  
21 §§ 1030, 1031.

22 4. Finally, recognizing the severe economic disadvantage that biased and discriminatory  
23 practices pose, California deems discrimination in violation of the FEHA also to violate the Unfair  
24 Competition Law (“UCL”). Cal. Bus. & Prof. Code §§ 17200, *et seq.*

25 5. In addition to other relief sought, Plaintiff seek preliminary and permanent injunctive  
26 relief to halt Defendants’ unlawful actions. Plaintiff intends to amend her complaint to add claims  
27 pursuant to the Private Attorneys General Act (“PAGA”) once the PAGA notice period has expired  
28 in order to obtain civil penalties on behalf of all aggrieved employees.

1 **THE PARTIES**

2 6. Plaintiff FANTASIA MCDONALD (“Plaintiff”) is a resident of Sacramento County,  
3 in the State of California. Plaintiff is a former employee of Nike. Plaintiff is the mother of a 3-year  
4 old child that was primarily breastfed until she was forced to stop due to Defendants’ centralized  
5 policies and practices regarding lactation accommodation.

6 7. Defendant Nike Retail Services Inc. (“Nike”) is an Oregon corporation with its  
7 headquarters in Beaverton, Oregon. Nike has approximately 47 locations in California.<sup>1</sup> Nike  
8 conducts substantial and continuous business in California. Nike is the entity appearing on Plaintiff’s  
9 pay checks and is the employer of Plaintiff and the Plaintiff Class because, among other things, it  
10 controls the hours, pay, and working conditions of Plaintiff and the Plaintiff Class and is also  
11 responsible for providing accommodations for nursing mothers at its retail locations.

12 8. The true names and capacities of Defendants named as Does 1-100, inclusive, whether  
13 individual, corporate, associate, or otherwise, are unknown to Plaintiff, who therefore sue such  
14 Defendants by such fictitious names. Plaintiff will amend this Complaint to show true names and  
15 capacities when they have been determined. The Does may be employers or agents of the employers  
16 of the Plaintiff class.

17 9. Plaintiff is informed and believes, and based thereon alleges, that at all times material  
18 hereto, each of the Defendants named herein were the agent, employee, alter ego, and/or joint venture  
19 of, or working in concert with each of the other co-Defendants and were acting within the course and  
20 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,  
21 conduct, and omissions were perpetuated by certain Defendants, each of the remaining Defendants  
22 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

23 10. At all times herein mentioned, Defendants, and each of them, were members of, and  
24 engaged in, a joint venture, partnership and common enterprise, and acting within the course and  
25 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

26 11. At all times herein mentioned, the acts and omissions of various Defendants, and each  
27 of them, concurred and contributed to the various acts and omissions of each and all of the other  
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<sup>1</sup> <https://www.nike.com/retail/directory/united-states/california>

1 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein  
2 mentioned, Defendants, and each of them, ratified each and every act or omission complained of  
3 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts  
4 and omissions of each and all of the other Defendants in proximately causing the damages as herein  
5 alleged.

6 12. Unless otherwise noted, wherever reference is made to Defendants herein, it is  
7 intended to include all of the named Defendants as well as the Doe Defendants. Each of the fictitiously  
8 named Doe Defendants is responsible in some manner for the occurrences alleged and proximately  
9 caused Plaintiff's damages as well as the damages of similarly situated employees.

10 13. The members of the Plaintiff Class, including the representative Plaintiff named  
11 herein, have been employed during the Class Period in California. The practices and policies which  
12 are complained of by way of this Complaint are enforced throughout the State of California and the  
13 United States.

#### 14 **JURISDICTION AND VENUE**

15 14. This Court has jurisdiction over Defendants because they conduct substantial and  
16 continuous business in the state of California. The case also arises from Defendants' wrongful  
17 conduct in California, where Plaintiff and members of the Plaintiff Class worked and continue to  
18 work for Defendants.

19 15. Venue is proper in this county under Code of Civ. Proc. § 395.5 because a substantial  
20 part of the events and omissions giving rise to the claims occurred in this county. There are aggrieved  
21 employees that were subjected to Labor Code violations in this county.

#### 22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 16. Plaintiffs have exhausted all administrative remedies.

24 17. On May 8, 2024, Plaintiff received her right-to-sue letters from the California Civil  
25 Rights Department.

#### 26 **FACTUAL ALLEGATIONS**

27 18. Nike employs around 83,000 people worldwide. Nike touts an Equal Employment  
28 Opportunity Policy that states all individuals will not be discriminated against based on sex.

1 **Breastfeeding is One of the Most Effective Ways to Ensure Mother/Baby Health.**

2 19. While there are women who cannot breastfeed, breast milk is considered “the best  
3 source of nutrition for most babies” per the Center for Disease Control (“CDC”).<sup>2</sup>

4 20. There are numerous breastfeeding benefits, including: protecting babies from  
5 illnesses; lowering risk of asthma, obesity, type I diabetes, and sudden infant death syndrome; shared  
6 antibodies between mother and baby; reducing mother’s risk of breast and ovarian cancer, type 2  
7 diabetes, and high blood pressure.<sup>3</sup>

8 21. The World Health Organization (“WHO”) recommends exclusive breastfeeding for  
9 the first six months and continued breastfeeding while introducing safe and complementary foods for  
10 up to two years of age or beyond.<sup>4</sup>

11 **Work Can be a Barrier to Breastfeeding.**

12 22. According to the CDC, 60% of mothers stop breastfeeding early. One contributing  
13 factor to this includes “unsupportive work policies and lack of parental leave.”<sup>5</sup>

14 23. In the United States, mothers usually return to work between three to six months  
15 postpartum.<sup>6</sup> Babies require three to six ounces per feed at those ages.<sup>7</sup> To support this feeding  
16 schedule, mothers must pump typically every two to three hours to maintain their milk supply.<sup>8</sup>

17 24. A typical pumping session takes about fifteen to twenty minutes, though some women  
18 require more time.<sup>9</sup>

19 25. In order to pump, women usually utilize an electrical pump. Breast pumps include a  
20 “breast shield” that goes over the nipple, which creates a vacuum to express milk, and a detachable  
21 container to collect the milk.<sup>10</sup>

22 \_\_\_\_\_  
23 <sup>2</sup> <https://www.cdc.gov/nccdphp/dnpao/features/breastfeeding-benefits/index.html#:~:text=Breastfeeding%20can%20help%20protect%20babies,ear%20infections%20and%20stomach%20bugs.>

24 <sup>3</sup> <https://www.cdc.gov/nutrition/infantandtoddlernutrition/breastfeeding/recommendations-benefits.html>

25 <sup>4</sup> [https://www.who.int/health-topics/breastfeeding#tab=tab\\_2](https://www.who.int/health-topics/breastfeeding#tab=tab_2)

26 <sup>5</sup> <https://www.cdc.gov/breastfeeding/data/facts.html>.

27 <sup>6</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7078554/>

28 <sup>7</sup> <https://www.parents.com/baby/feeding/baby-feeding-chart-how-much-and-when-to-feed-infants-the-first-year/>

<sup>8</sup> <https://americanpregnancy.org/healthy-pregnancy/breastfeeding/how-to-breast-pump-milk/>

<sup>9</sup> [https://www.whattoexpect.com/pumping-breast-](https://www.whattoexpect.com/pumping-breast-milk.aspx#:~:text=Aim%20to%20spend%2015%20to,breast%20flanges%20after%20every%20use)

[milk.aspx#:~:text=Aim%20to%20spend%2015%20to,breast%20flanges%20after%20every%20use](https://www.whattoexpect.com/pumping-breast-milk.aspx#:~:text=Aim%20to%20spend%2015%20to,breast%20flanges%20after%20every%20use)

<sup>10</sup> <https://www.fda.gov/consumers/consumer-updates/what-know-when-buying-or-using-breast-pump#:~:text=Breast%20pumps%20are%20medical%20devices,can%20latch%20on%20more%20easily>

1           26.     The FDA recommends consistent disinfection of breast pumps between uses, which  
2 includes rinsing as soon as possible after pumping using liquid dishwashing soap and warm water,  
3 allowing the pieces to air dry on clean paper towel or drying rack.<sup>11</sup> For this reason, employers need  
4 to provide access to sinks with running water.<sup>12</sup>

5           27.     Not having a secure space for lactation can increase anxiety and feelings of being  
6 overwhelmed, which can have a negative impact on the mother’s mental, physical, and emotional  
7 health. Nursing mothers who do not have adequate workplace support are at an increased risk of early  
8 weaning, illness and/or infections, and job loss. Therefore, it is critical for workplaces to provide a  
9 secure lactation space for nursing mothers.

10          28.     Additionally, sudden changes in a mother’s nursing schedule can cause physical  
11 ramifications, including engorgement, mastitis, and reduced milk supply. Engorgement occurs when  
12 milk is not fully expressed, which can be uncomfortable and increase the risk of mastitis (infection  
13 of the milk ducts).<sup>13</sup> Severe mastitis can lead to sepsis, which is life threatening and requires intensive  
14 care.<sup>14</sup>

15          29.     Even if women do not develop these problems, trying to pump while already engorged  
16 can cause nipple trauma and bruising. Further, as few as four consecutive days of inadequate pumping  
17 breaks can reduce milk supply, and it takes much longer to bring supply back up —if it ever comes  
18 back.<sup>15</sup>

19          30.     In 2022, there was a nationwide infant formula shortage, which stripped mothers of  
20 assurance in keeping babies fed and healthy.<sup>16</sup> Baby formula shortages, combined with unsupportive  
21 work policies that impede lactation, exacerbate the insecurity mothers experience in making sure their  
22 babies are fed.

23           **Plaintiff’s Experiences.**

24          31.     Ms. McDonald began her employment at Nike in October 2022. She was terminated  
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26 <sup>11</sup> Id.

27 <sup>12</sup> See Cal. Lab. Code §1031.

28 <sup>13</sup> <https://www.npr.org/sections/health-shots/2016/05/26/479288270/women-who-have-to-delay-pumping-risk-painful-breast-engorgement>

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9734447/>

1 on March 8, 2024. She worked at Nike as a Department Manager or Coach and worked primarily at  
2 the Nike Factory Outlet Store on 13000 Folsom Blvd., Suite 401 (“Folsom”) in Folsom, California.  
3 Ms. McDonald also attended training at the Nike Factory Store in Vacaville, California.

4 32. Ms. McDonald gave birth to her child on March 29, 2021. She had her child prior to  
5 working at Nike. However, she started having issues with Nike after she started breastfeeding again.

6 33. When Ms. McDonald started working at Nike, she had stopped breastfeeding her  
7 child. When Ms. McDonald returned to work after recovering from COVID in or about August 2023,  
8 she started to express milk again and wanted to resume breastfeeding her child. She requested time  
9 and a private space to pump milk. However, Nike did not provide a conducive environment for  
10 pumping.

11 34. First, Nike did not provide reasonable breaks to pump. Management did not allow Ms.  
12 McDonald to have pumping sessions unless it was during her meal or rest periods. However, the need  
13 to pump often requires time for pumping outside of scheduled meal and rest periods. When Ms.  
14 McDonald would request to pump outside of her scheduled breaks, management would comment that  
15 she was setting a bad example as a “coach” (the term of Nike retail supervisors) for her subordinates  
16 and would deny the request. As a result, Ms. McDonald was forced to drive ten minutes to her friend’s  
17 house to pump on her lunch break. When she was at work, Ms. McDonald was forced to express milk  
18 in the bathroom sink to relieve the pressure of her engorged breasts and to avoid getting her shirt  
19 soaked through from her leaking breasts.

20 35. Second, Nike did not have a legally compliant, dedicated lactation facility. At Folsom,  
21 there was no designated room. Ms. McDonald was given the option to pump (1) in the manager’s  
22 office, (2) her car, or (3) the bathroom. In the manager’s office she was told there were cameras and  
23 there was a web camera that was facing directly at the place where she would pump. In addition, the  
24 management team had access to the office so other people could go into the office and interrupt her  
25 if she were to pump. Ms. McDonald could not pump in her car because her car did not have any  
26 outlets to use a pump. She did not have tinted windows in her car, and her car was in an open area in  
27 the parking lot so there was no privacy. She did not feel comfortable pumping in a public space where  
28 there were people walking around. There was no refrigerator to exclusively store her milk. Ms.

1 McDonald would have to store her pumped milk in the fridge in the break room that was used by her  
2 coworkers to store their lunches. There were a couple of times that Ms. McDonald stored her milk in  
3 the fridge, but it was thrown out even when she put her name on the milk. The bathroom did not have  
4 working outlets and there was an open toilet because there was no lid. Ms. McDonald's use of the  
5 bathroom was constantly monitored by management. Ms. McDonald would always get interrupted  
6 because she was called on the walkie talkie to come to the floor and there were always people trying  
7 to use the restroom. It took around 10 minutes for McDonald to squeeze out her milk in the sink, and  
8 she would have to go to the bathroom every 20 to 30 minutes. There were also times that the bathroom  
9 was being used and she had to wait to squeeze out the milk from her breasts.

10 36. Consequently, Ms. McDonald experienced a reduction in her milk supply for her child.  
11 She was forced to stop breastfeeding in or about February 2024. The reduction in her milk supply and  
12 lack of accommodation provided by Nike have caused Ms. McDonald to experience embarrassment,  
13 anguish, personal hardship, anxiety, humiliation, and emotional distress.

14 37. Ms. McDonald is informed and believes that other employees in the Plaintiff Class  
15 were not provided lactation accommodations. It was difficult for plaintiff and other members of the  
16 class to find suitable areas that were private and equipped to pump. Significantly, there was also no  
17 notice provided to McDonald and members of the Plaintiff Class of their rights to lactation  
18 accommodation. Plaintiff is unaware whether Nike even has a written lactation accommodation  
19 policy.

20 38. Plaintiff witnessed other employees, similarly situated as herself, who were unable to  
21 express milk for their infants as a result of the unlawful policies promulgated by Defendants.

22 39. Nike's failure to comply with California law has significantly impacted Ms.  
23 McDonald and other breastfeeding employees of Defendants. Rather than support breastfeeding  
24 mothers, Defendants' practices forced those mothers into making the unimaginable choice between  
25 utilizing demeaning, invasive, and unsanitary spaces to express milk or abandoning pumping and  
26 breastfeeding altogether.

27 40. It would be relatively easy for Defendants to comply with California law, given how  
28 Nike is one of the largest employers in the United States. For example, Defendants could have hired

1 more employees to permit nursing employees to take adequate break time to pump. Defendants could  
2 have created designated and legally compliant lactation spaces in their current locations, or used  
3 portable pods, which are prefabricated temporary spaces that are commercially available for  
4 installation. Examples of such spaces include those sold by Mamava,<sup>17</sup> Brighter Booth<sup>18</sup>, and DayOne  
5 Baby,<sup>19</sup> among others.

6 **Class Action Allegations.**

7 41. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

8 42. Plaintiff bring this action on behalf of herself and all others similarly situated pursuant  
9 to California Code of Civil Procedure § 382. The classes that Plaintiff seek to represent (the “Plaintiff  
10 Class”) are composed of and defined as follows:

11 (1) Plaintiff Class

12 All persons who have been, or currently are, employed by Defendants in the State of  
13 California who are lactating parents, e.g., individuals who express milk for their infant  
14 children or others. (The Class Period is defined as the period from four years prior to the  
15 filing of this action through and including the date judgment is rendered in this matter).

16 43. The Plaintiff Class is so numerous that the individual joinder of all members is  
17 impracticable. While the exact number and identification of the Plaintiff Class is unknown to Plaintiff  
18 at this time, Plaintiff is informed and believes that the class includes potentially hundreds of members.

19 44. Common questions of law and fact exist as to all Class Members and predominate  
20 over any questions affecting solely individual members of the class. Among the questions of law and  
21 fact, that are relevant to the adjudication of class members claims are as follows:

- 22 • Whether Defendants maintain legally compliant areas for lactation  
23 accommodation/breast pumping at their retail locations;
- 24 • Whether Defendants provide notice to their employees informing them of their right  
25 to breast pump and lactation accommodation;
- 26 • Whether Defendants’ policies and practices allow nursing mother employees to  
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28 <sup>17</sup> <https://www.mamava.com>

<sup>18</sup> <https://www.brighterbooth.com>

<sup>19</sup> <https://dayonebaby.com>

1 express/pump milk in compliance with California law, including allowing time to  
2 pump outside of meal and rest periods;

- 3 • Whether Defendants are in violation of California Labor Code §1030, et seq. and  
4 §226.7 for failing to provide compliant lactation accommodation breaks;
- 5 • Whether Defendants' conduct as alleged herein violates the Unfair Business Practices  
6 Act of California, Bus & Prof. Code §17200, et. seq.;
- 7 • Whether Defendants' conduct is in violation of the Fair Employment and Housing  
8 Act, California Government Code §12940, et. seq.

9 45. The claims of the named Plaintiff are typical of the claims of the members of the  
10 Plaintiff Class. Plaintiff and Class Members sustained losses, injuries and damages arising from  
11 Defendants' common policies, practices, procedures, protocols, routines, and rules which were  
12 applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses,  
13 injuries, and damages as were suffered by other members of the proposed class.

14 46. Plaintiff is an adequate representative of the proposed classes because she is a member  
15 of the class, and her interests do not conflict with the interests of the members she seeks to represent.  
16 Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions,  
17 and together Plaintiff and her counsel intend to prosecute this action vigorously for the benefit of the  
18 classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and  
19 her attorneys.

20 47. A class action is superior to other available methods for the fair and efficient  
21 adjudication of this litigation since individual litigation of the claims of all Class Members is  
22 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an  
23 individual basis because this would potentially result in hundreds of individuals, repetitive lawsuits.  
24 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and  
25 the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with  
26 equally meritorious claims. By contrast, the class action device presents far fewer management  
27 difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive  
28 supervision by a single court.



1 lactation.” Cal. Code Regs. tit. 2, § 11035(d).

2 53. In addition, Cal. Code Regs. tit. 2, § 11035(s) states that a “reasonable  
3 accommodation,” as used in the failure to accommodate pregnancy statute, “may include, ...  
4 providing a reasonable amount of break time and use of a room or other location in close proximity  
5 to the employee’s work area to express breast milk in private as set forth in the Labor Code.”

6 54. Cal. Labor Code § 1030 provides that an employer “shall provide a reasonable amount  
7 of break time to accommodate an employee desiring to express breast milk for the employee’s infant  
8 child.”

9 55. Cal. Labor Code § 1031 provides that an employer “shall make reasonable efforts to  
10 provide” an employee a place, other than a bathroom, that is shielded from view and free from  
11 intrusion by coworkers to express breast milk.

12 56. At all times mentioned in this Complaint, Cal. Labor Code §§ 1030-1034 were in full  
13 force and effect and binding on Defendants. As alleged above, Defendants failed to provide Plaintiff  
14 and members of the Plaintiff Class reasonable break time or a place shielded from view and free from  
15 intrusion by coworkers to express breast milk. Accordingly, Defendants violated and continues to  
16 violate Plaintiff’s rights under the FEHA’s failure to accommodate pregnancy-related conditions  
17 provision.

18 57. Defendants failed and continue to fail to provide notice of their FEHA rights and  
19 obligations regarding pregnancy, childbirth, or related medical conditions under Cal. Code Regs. tit.  
20 2 § 11049(a).

21 58. As a direct and proximate result of Defendants’ policies or practices, Plaintiff and  
22 members of the Plaintiff Class have suffered and continue to suffer injury, including but not limited  
23 to lost wages, lower wages, and other compensation and benefits in amounts to be proven at trial.

24 59. As a direct and proximate result of Defendants’ policies and practices, Plaintiff and  
25 members of the Plaintiff Class have suffered and continue to suffer injury, including but not limited  
26 to emotional distress, entitling them to compensatory damages in an amount to be proven at trial.

27 60. Defendants committed the unlawful actions herein despicably, maliciously,  
28 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and members of the

1 Plaintiff Class, from an improper and evil motive amounting to malice, and in conscious disregard of  
2 the rights of Plaintiff and members of the Plaintiff Class. Plaintiff and members of the Plaintiff Class  
3 are therefore entitled to recover punitive damages from Defendants in an amount to be proven at trial.

4 61. Plaintiff and members of Plaintiff Class are entitled to reasonable attorneys' fees and  
5 costs pursuant to Cal. Gov't Code § 12965(b).

6 62. Plaintiff and members of Plaintiff Class are also entitled to declaratory relief declaring  
7 that Defendants' policies and practices that fail to reasonably accommodate lactating casual workers  
8 are unlawful and to appropriate preliminary and permanent injunctive relief to stop Defendants'  
9 unlawful conduct.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO ENGAGE IN GOOD-FAITH INTERACTIVE PROCESS**

12 **TO REASONABLY ACCOMMODATE LACTATION**

13 **(CAL. GOV'T CODE § 12945(A)(3); CAL. CODE REGS. TIT. 2 § 11040(A)(2)(B), § 11035)**

14 **ON BEHALF OF PLAINTIFF IN HER INDIVIDUAL CAPACITY AND ON**

15 **BEHALF OF THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

16 63. Plaintiff incorporates herein by reference the allegations set forth above.

17 64. Cal. Code Regs. tit. 2 § 11040(a)(2)(B) requires an employer to "engage in a good  
18 faith interactive process to identify and implement [a] request for reasonable accommodation" made  
19 by an "employee affected by pregnancy."

20 65. Cal. Code Regs. tit. 2 § 11035 defines "affected by pregnancy" to include not only  
21 pregnancy and childbirth, but also "a physical or mental condition intrinsic to pregnancy or childbirth  
22 that includes, but is not limited to, lactation." *Id.* (cross-referencing Cal. Gov't Code § 12945 and  
23 "condition related to pregnancy" as used therein).

24 66. Defendants violated and continue to violate FEHA's requirement that employers  
25 engage in a good faith interactive process to identify reasonable accommodations for pregnancy-  
26 affected employees. Defendants refused to meaningfully engage in a back and forth regarding  
27 Plaintiff's need for lactation accommodation. Plaintiff is informed and believe that Defendants also  
28 fail to engage in the interactive process with its nursing and lactating employees throughout

1 California. It appears Defendants managers and supervisors do not receive training on lactation  
2 accommodation, which contributes to the issues experienced by nursing and lactating employees  
3 when they seek to pump at work.

4 67. As a direct and proximate result of Defendants’ policies and practices, Plaintiff and  
5 members of the Plaintiff Class have suffered and continue to suffer injury, including but not limited  
6 to lost wages, lower wages, and other compensation and benefits in amounts to be proven at trial.

7 68. As a direct and proximate result of Defendants’ policies and practices, Plaintiff and  
8 members of the Plaintiff Class have suffered and continue to suffer injury, including but not limited  
9 to emotional distress, entitling them to compensatory damages in an amount to be proven at trial.

10 69. Defendants committed the unlawful actions herein despicably, maliciously,  
11 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and members of the  
12 Plaintiff Class, from an improper and evil motive amounting to malice, and in conscious disregard of  
13 the rights of Plaintiff and members of the Plaintiff Class. Plaintiff and members of the Plaintiff Class  
14 are therefore entitled to recover punitive damages from Defendants in an amount to be proven at trial.

15 70. Plaintiff and members of the Plaintiff Class are entitled to declaratory relief declaring  
16 that Defendants’ policies and practices of refusing to engage in a good faith interactive process with  
17 pregnancy-affected casual workers to identify possible reasonable accommodations is unlawful and  
18 to appropriate preliminary and permanent injunctive relief to stop Defendants’ unlawful conduct.

19 71. Plaintiffs and members of the Plaintiff Class are entitled to reasonable attorneys’ fees  
20 and costs pursuant to Cal. Gov’t Code § 12965(b).

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO ACCOMMODATE LACTATION – VIOLATION OF CALIFORNIA LABOR**

23 **CODE §§1030-1334**

24 **ON BEHALF OF PLAINTIFF IN HER INDIVIDUAL CAPACITY AND ON**  
25 **BEHALF OF THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

26 72. Plaintiff incorporates herein by reference the allegations set forth above.

27 73. At all times relevant herein, California Labor Code 1031 provides that “[t]he employer  
28 shall make reasonable efforts to provide the employee with the use of a room or other location, other

1 than a toilet stall, in close proximity to the employee's work area, for the employee to express milk  
2 in private. The room or location may include the place where the employee normally works if it  
3 otherwise meets the requirements of this section.”

4 74. At the Nike location where Plaintiff worked, there would either be the bathroom, or  
5 no area to pump at all.

6 75. Plaintiff is aware that other similarly situated employees like herself were also unable  
7 to pump due to the lack of accommodations.

8 76. Defendants' failure to accommodate Plaintiff and the Plaintiff Class with a reasonable  
9 ability to express milk in private has directly and proximately resulted in harm to Plaintiff and the  
10 Plaintiff Class.

11 77. Defendants knowingly and willfully refused to perform its obligations to  
12 accommodate Plaintiff and the Plaintiff Class, in violation of state law. As a direct result, Plaintiff  
13 and the Plaintiff Class have suffered, and continue to suffer damages including lost wages, and  
14 expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation under  
15 state law, in accordance with Plaintiff's and the Plaintiff Class's respective damage amounts  
16 according to proof at time of trial.

17 78. Defendants committed such actions knowingly and willfully, with the wrongful and  
18 deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to  
19 malice, and in conscious disregard of Plaintiff and the Plaintiff Class's rights.

20 79. California Labor Code §1033(a) provides as follows: [a]n employer who violates any  
21 provision of this chapter shall be subject to a civil penalty in the amount of one hundred dollars (\$100)  
22 for each violation. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,  
23 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

24 80. As a proximate result of the above-mentioned violations Plaintiff and the Plaintiff  
25 Class have been damages in an amount according to proof at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **VIOLATIONS OF CALIFORNIA LABOR CODE §226.7 FOR FAILURE TO PROVIDE**

3 **COMPLAINT LACTATION BREAKS**

4 **ON BEHALF OF PLAINTIFF IN HER INDIVIDUAL CAPACITY AND ON**

5 **BEHALF OF THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

6 81. Plaintiff incorporates herein by reference the allegations set forth above.

7 82. As set forth above, Defendants have failed to adequately provide for its employees’  
8 lactation breaks resulting in unpaid time that breastfeeding mothers spent traveling to alternative  
9 breast-feeding locations, unpaid time using manual and electrical pumps, unpaid time waiting for  
10 other employees to finish using the limited facility provided for its employees, unpaid time to clean  
11 pumping supplies, and unpaid time devoted to breast-feeding employees returning to their stations.

12 83. This unpaid time would not be so significant if not for Defendants unlawful conduct  
13 in failing to comply with Sections 1030-1032 of the California Labor Code.

14 84. Pursuant to Labor Code §1030 every employer must provide a reasonable amount of  
15 break time to accommodate an employee desiring to express breast milk for the employee's infant  
16 child each time the employee has a need to express milk. The break time shall, if possible, run  
17 concurrently with any break time already provided to the employee. While break time for an  
18 employee that does not run concurrently with the rest time authorized for the employee by the  
19 applicable wage order of the Industrial Welfare Commission need not be paid, the denial of a break  
20 or adequate space to express milk pursuant to Labor Code Section 1033 may result in the recovery of  
21 one hour of pay at the employee’s regular rate of pay for each violation by filing a wage claim under  
22 Labor Code section 226.7.

23 85. California Labor Code §226.7(c) states, “If an employer fails to provide an employee  
24 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an  
25 applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission,  
26 the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and  
27 Health, the employer shall pay the employee one additional hour of pay at the employee’s regular  
28 rate of compensation for each workday that the meal or rest or recovery period is not provided.”



1 **SIXTH CAUSE OF ACTION**

2 **VIOLATIONS OF CALIFORNIA LABOR CODE §§201-203 FOR WAITING TIME**  
3 **PENALTIES**

4 **ON BEHALF OF PLAINTIFF IN HER INDIVIDUAL CAPACITY AND ON**  
5 **BEHALF OF THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

6 95. Plaintiff incorporates herein by reference the allegations set forth above.

7 96. Throughout the period for the Plaintiff Class, Plaintiff and members of the Plaintiff  
8 Class were employees of Defendants.

9 97. At the time of resignation or termination of former-employee members of the Plaintiff  
10 Class, Defendants owed all former-employee members of the Plaintiff Class wages that had not been  
11 paid to them when they became due.

12 98. Defendants willfully failed to pay former-employee members of the Plaintiff Class,  
13 all wages due and owing them immediately upon termination or resignation, or within 72 hours of  
14 resignation, in violation of California Labor Code §§201, 202.

15 99. Defendants never tendered payment of all wages due and owing to any other former-  
16 employee members of the Plaintiff Class at any time.

17 100. As a result of Defendants' improper practices, Plaintiff Class are entitled to recover  
18 waiting-time penalties at their daily rate of pay multiplied by the number of days the wages went  
19 unpaid, up to maximum of 30 days in an amount to be proven at trial.

20 **SEVENTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION IN VIOLATION OF UNFAIR COMPETITION LAW**  
22 **(CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

23 **ON BEHALF OF PLAINTIFF IN HER INDIVIDUAL CAPACITY AND ON**  
24 **BEHALF OF THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS**

25 101. Plaintiff incorporates herein by reference the allegations set forth above.

26 102. Unfair practices prohibited by the UCL include "any unlawful, unfair or fraudulent  
27 business act or practice." Cal. Bus. & Prof. Code § 17200.

28 103. Defendants committed unlawful business practices by violating the FEHA and

1 California Labor Code, as well as regulations interpreting the FEHA and Labor Code, including, but  
2 not limited to: failing to engage in an interactive process with Plaintiff and members of the Plaintiff  
3 Class and failing to reasonably accommodate lactation needs, and other related medical conditions.  
4 In addition, Defendants failed to provide premium pay for non-compliant lactation breaks.

5 104. Defendants' acts and omissions, as alleged herein, also constitute unfair business  
6 practices prohibited by Business & Professions Code §§ 17200 *et seq.* Defendants' policies and  
7 practices are immoral, unethical, oppressive, unscrupulous, and offensive to the established public  
8 policies of ensuring breastfeeding people, and people with pregnancy-related conditions or  
9 disabilities are accommodated in the workplace. As a result of their unfair business practices,  
10 Defendants have reaped and continue to reap unfair and illegal profits at the expense of Plaintiff and  
11 members of the Plaintiff Class.

12 105. Business & Professions Code § 17203 provides that the Court may restore to any  
13 person in interest any money or property that may have been acquired by means of unfair competition  
14 and order restitutionary damages by operation of the practices alleged herein. Plaintiff and members  
15 of the Plaintiff Class are therefore entitled to restitution of wages acquired by Defendants as a result  
16 of their unlawful policies and practices. Specifically, Plaintiffs may recover all lost wages which  
17 resulted from Defendants' violations of the law and premium pay pursuant to Cal. Labor Code section  
18 226.7.

19 106. Pursuant to Code of Civ. Proc. § 1021.5, Plaintiff and members of the Plaintiff Class  
20 are entitled to payment of their attorneys' fees, costs, and expenses incurred in bringing this action.

21 107. Furthermore, injunctive and declaratory relief is necessary and proper to prevent  
22 Defendants from repeating these wrongful practices as alleged above.

23  
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff and Class Members pray for judgement as follows:

- 26 a. For an order certifying cause of action 1-7 as a class action;  
27 b. For an order that counsel for Plaintiff be appointed class counsel;  
28 c. Designation of Plaintiff as the class representative of the Plaintiff Class;

- 1 d. For premium pay pursuant to Cal. Labor Code section 226.7;
- 2 e. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
- 3 and disgorgement of all profits from the unlawful business practices of Defendant;
- 4 f. A declaration that Defendants' practices violate the California Labor Code and
- 5 California Business & Professions Code;
- 6 g. Prejudgment and post judgment interest on all sums awarded;
- 7 h. For compensatory damages;
- 8 i. For penalties pursuant to California Labor Code §§ 201-203, 226, 226.7, 1030-1033;
- 9 j. For interest accrued to date;
- 10 k. For reasonable attorneys' fees and costs pursuant to all statutes will provide for
- 11 attorneys' fees and costs;
- 12 l. A declaratory judgment that Defendant has knowingly and intentionally violated the
- 13 following provisions of law: California Labor Code §§ 226.7, 1030-1033; California
- 14 Business & Professions Code §§ 17200-08 by violating the provisions set forth
- 15 herein above;
- 16 m. For punitive damages; and
- 17 n. For preliminary and permanent injunctive relief.

18  
19 Dated: May 8, 2024

Respectfully submitted,

20  
21 By: /s/ Michael Morrison

22 MICHAEL S. MORRISON  
23 ERIN LIM  
24 Alexander Morrison + Fehr LLP  
25 ATTORNEYS FOR PLAINTIFF  
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands trial by jury on all claims and causes of action so triable.

3  
4 Dated: May 8, 2024

Respectfully submitted,

5  
6 By:  /s/ Michael Morrison

7 MICHAEL S. MORRISON  
8 ERIN LIM  
9 Alexander Morrison + Fehr LLP  
10 ATTORNEYS FOR PLAINTIFF  
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