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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN FRANCISCO
15

16 CALI BUNN, individually and on behalf of
17 all others similarly situated,

18 Plaintiff,

19 v.

20 NIKE, INC., an Oregon corporation,

21 Defendant.
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CASE NO.

CLASS ACTION COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES FOR
VIOLATIONS OF:

1. Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12181 et seq.)
2. Unruh Civil Rights Act (Cal. Civil Code § 51 et seq.)
3. California Disabled Persons Act (Cal. Civ. Code § 54 et seq.)

JURY TRIAL REQUESTED

25 INTRODUCTION

26 1. Although the COVID-19 pandemic has made life difficult for everyone, it has
27 caused special problems for the 37 million people in the United States and three million
28 people in California who are deaf or hard of hearing. California state and local governments,

1 like many governments throughout the country, require (or at least strongly recommend) the
2 use of masks or other face coverings to reduce the spread of the novel coronavirus. In
3 response to these directives, many retail companies in California, including defendant Nike,
4 Inc. (“Nike”), now require their employees to wear face masks at work, at least when
5 interacting with customers or co-workers. These mandatory masking requirements serve an
6 important public health and safety purpose. But they can be – and in this case have been –
7 implemented in a manner that discriminates against deaf or hard of hearing individuals in
8 violation of state and federal law.

9 2. This is a class action for injunctive relief and statutory damages, brought on behalf
10 of deaf and hard of hearing Californians who are current or future customers of Nike at its
11 retail stores in California. Throughout California (and perhaps, discovery will demonstrate,
12 throughout the country), Nike has implemented a mandatory mask-wearing policy that
13 requires its retail store employees to wear Nike-supplied and Nike-branded masks made of
14 cloth or other opaque fabric whenever they interact with customers and co-workers. Those
15 opaque masks create unique communications problems for deaf and hard of hearing people,
16 because they muffle speech and block visualization of the mouth area and facial
17 expressions. For the substantial percentage of deaf and hard of hearing people, like plaintiff
18 Cali Bunn, who rely on speechreading (also known as lipreading) to understand speech,
19 Nike’s face mask requirement interferes with their ability to hear and to communicate. *See*,
20 *e.g.*, [https://www.wsj.com/articles/the-pandemic-has-made-my-hearing-problem-even-more-](https://www.wsj.com/articles/the-pandemic-has-made-my-hearing-problem-even-more-of-a-problem-11594908056?mod=searchresults&page=1&pos=2)
21 [of-a-problem-11594908056?mod=searchresults&page=1&pos=2;](https://www.wsj.com/articles/the-pandemic-has-made-my-hearing-problem-even-more-of-a-problem-11594908056?mod=searchresults&page=1&pos=2)
22 <https://www.bbc.com/news/world-52764355>.

23 3. Under the federal Americans with Disabilities Act (“ADA”), the California Unruh
24 Act, and the California Disabled Persons Act (“CDPA”), retail establishments such as
25 defendant Nike have an affirmative duty to adopt policies or to make reasonable
26 modifications to existing policies, and to provide auxiliary aids and services sufficient “to
27 ensure that no individual with a disability is excluded, denied services, segregated or
28 otherwise treated differently” than people without disabilities. *See, e.g.*, 42 U.S.C.

1 § 12182(b)(2)(A)(ii). Nike’s current statewide policy of requiring all employees to wear
2 opaque fabric masks featuring the Nike swoosh trademark violates each of these laws by
3 excluding disabled persons like plaintiff Bunn, and all those similarly situated, from
4 obtaining equal access to the company’s services.

5 4. There are many ways Nike could comply with its obligations under federal and
6 state law to accommodate its deaf and hard of hearing customers while continuing to
7 mandate the use of masks or other face coverings by its employees. For example, many
8 companies sell face masks that have transparent plastic inserts over the mouth area to permit
9 speechreading. Use of such masks, which cost approximately the same as traditional cloth
10 masks, would ensure the safety of Nike’s employees and customers without discriminating
11 against those customers who are deaf or hard of hearing. Other reasonable accommodations
12 are also readily available, including the use of American Sign Language (“ASL”) interpreters
13 and closed captioning devices.

14 5. None of these accommodations would pose an undue burden on Nike, a company
15 whose revenues in 2019 exceeded \$39 billion. Yet Nike has failed to take any of these
16 reasonably appropriate steps to accommodate its customers who are deaf or hard of hearing.
17 This lawsuit seeks an injunction prohibiting Nike from continuing to discriminate against
18 persons with hearing-related disabilities, as well as statutory damages to plaintiff and to other
19 similarly situated California customers whose rights have been violated by Nike’s unlawful
20 conduct.

21 PARTIES

22 6. Plaintiff Cali Bunn is over 18 years old and resides in the State of California. She
23 has severe-to-profound hearing loss, which is a physical impairment that substantially limits
24 her major life activities of hearing and communicating. 42 U.S.C. § 12102(1)(A) and (2)(A).
25 Plaintiff relies on speechreading and interpretation of visual cues such as facial expressions
26 to understand speech. She is a Nike customer, whose upsetting experience at a Nike retail
27 store while unsuccessfully trying to communicate with a masked salesperson during the
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1 recent pandemic caused her embarrassment and anguish and prevents her from returning to
2 shop for Nike products at Nike retail stores in California that she would otherwise frequent.

3 7. Defendant Nike, Inc. is an Oregon corporation with its principal place of business
4 in Beaverton, Oregon. Nike owns and operates 384 retail stores in the United States.
5 Approximately 37 of those Nike retail stores are in California, many in Northern California.
6 Nike's retail stores are "public accommodations" under 42 U.S.C. § 12181(7)(E).

7 JURISDICTION AND VENUE

8 8. This Court has original jurisdiction over plaintiff's claims under California law and
9 has concurrent jurisdiction over plaintiff's federal ADA claim. *Yellow Freight Sys. v.*
10 *Donnelly* (1990) 494 U.S. 820.

11 9. Venue is proper in this Court because Nike has not designated a principal business
12 office in California, and because some of the events, acts and omissions giving rise to
13 plaintiff's claims – which arise from Nike's statewide or nationwide policy of requiring
14 opaque fabric face coverings -- occurred in San Francisco County. Nike maintains a store
15 located at 278 Post Street in San Francisco.

16 GENERAL ALLEGATIONS

17 10. On information and belief, plaintiff alleges that Nike has implemented a
18 company-wide policy applicable to all of its stores in California and throughout the United
19 States of requiring its employees to wear masks when assisting customers. Nike's employees
20 comply with that policy. However, the masks that Nike provides its employees are made of
21 opaque cloth or other fabric that covers the employees' mouths and block their facial
22 expressions, and therefore interfere with the ability of Nike's deaf and hard of hearing
23 customers, including plaintiff and all those similarly situated to her, to hear and/or
24 communicate with those Nike employees.

25 11. Nike claims to pride itself on providing exceptional service to its customers.
26 According to a job listing for a Retail Sales Associate in California, Nike requires its
27 salespersons to have a "relentless focus on product knowledge and customer service" and to
28 provide "valuable experiences to consumers every day." Nike requires its salespersons to be

1 friendly, to care for customers, and to bring “passion, energy, drive & positivity into
2 customer interactions.” Thus, friendly and personalized customer service is one of the
3 “services,” “privileges” and “advantages” Nike provides to its customers. 42 U.S.C. §
4 12182(b)(2)(A)(ii).

5 12. On July 12, 2020, plaintiff visited a Nike retail store in San Diego, California to
6 purchase Nike-branded shoes. When she arrived at the store, all of the Nike employees on the
7 sales floor were wearing opaque face masks that obstructed view of their mouths and facial
8 expressions. Plaintiff asked a male salesperson for assistance in locating a pair of
9 shoes. Because the salesperson was wearing a mask, plaintiff could not hear or understand
10 what the salesperson was saying in response to her questions. Plaintiff indicated to the
11 salesperson that she was having difficulty understanding him because she was hard of
12 hearing. Twice she asked the salesperson to repeat himself. The salesperson responded by
13 expressing frustration with plaintiff, which plaintiff found embarrassing and demeaning to
14 her. The salesperson did not lower his mask, provide an auxiliary aid, or make any other
15 attempt to effectively communicate with plaintiff. Plaintiff then asked her mother, who was
16 standing nearby, what the salesperson had said. From that point on, the salesperson
17 communicated with plaintiff’s mother exclusively, instead of with plaintiff, causing further
18 embarrassment to plaintiff and depriving plaintiff of the friendly and personalized customer
19 service that Nike’s hearing customers enjoy, solely because plaintiff has a disability.

20 13. Plaintiff has shopped in Nike stores in the past and would like to shop in Nike
21 stores in the future. However, because of Nike’s discriminatory face mask policy and the
22 negative impacts that policy has had and will continue to have on plaintiff’s ability to hear
23 and communicate with Nike’s sales staff, plaintiff is currently deterred from returning to
24 Nike’s retail stores and will be deterred in the future, unless and until Nike eliminates its
25 discriminatory policy.

26 14. On information and belief, although Nike has mandated a company-wide policy
27 requiring all salespersons to wear masks while assisting customers, Nike has not provided
28 any of its salespersons with clear face masks or other auxiliary aids, and Nike has not

1 provided any training to its salespersons or given them any instructions or guidance on how
2 to accommodate customers who are deaf or hard of hearing and who for that reason cannot
3 effectively communicate with Nike employees wearing opaque fabric masks.

4 CLASS ACTION ALLEGATIONS

5 10. Plaintiff seeks to maintain this action for injunctive relief and statutory damages
6 as a class action under Code of Civil Procedure § 382. The Class, on whose behalf plaintiff
7 seeks injunctive relief, consists of all individuals in California who are deaf or hard of
8 hearing. Plaintiff also seeks certification of a statutory damages Subclass, consisting of all
9 Class members who, since the onset of the COVID-19 pandemic and Nike’s implementation
10 of its mandatory mask-wearing policy, shopped or desired to shop at a Nike retail store in
11 California whose customer-interacting employees wore opaque fabric face masks. Plaintiff
12 reserves the right to allege a nationwide class action if discovery and investigation warrant.

13 11. The proposed Class is believed to consist of approximately three million
14 members. The proposed Subclass is believed to consist of well over 1,000 members. Joinder
15 of all of such Class and Subclass members in this lawsuit is impracticable.

16 12. There are numerous questions of law and fact common to the Class and Subclass,
17 including without limitation, the following:

18 a. Whether Nike is legally obligated to modify its mask policy and/or provide
19 auxiliary aids such as modified face masks, ASL interpreters or closed captioning devices;

20 b. Whether it would be an undue burden for Nike to modify its mask policy
21 and/or provide such auxiliary aids;

22 c. Whether Nike’s policy of requiring its employees to wear opaque fabric
23 face masks and failing to modify that policy and/or provide auxiliary aids violates the ADA,
24 the Unruh Act and/or the California Disabled Persons Act (“CDPA”).

25 13. Plaintiff’s claims are typical of, and not antagonistic to, the claims of all other
26 members of the Class and Subclass. Plaintiff adequately represents the interests of
27 individuals who are deaf and hard of hearing, all of whom will suffer the same or similar
28 injury due to Nike’s unlawful conduct.

1 14. Plaintiff and her counsel will fairly and adequately protect the interests of absent
2 Class and Subclass members. There are no material conflicts between plaintiff's claims and
3 those of absent Class and Subclass members that would make class certification
4 inappropriate.

5 15. Plaintiff's counsel are experienced in class action litigation and will vigorously
6 assert plaintiff's claims and the claims of all Class and Subclass members.

7 16. Nike's violations of the ADA, the Unruh Act, and the CDPA affect or potentially
8 affect all members of the Class and Subclass. Therefore, an injunction requiring compliance
9 with the ADA, the Unruh Act, and the CDPA, which is the primary relief sought through this
10 lawsuit, is appropriate. Additionally, the questions of law and fact that are common to Class
11 and Subclass members predominate over individual questions affecting members of the Class
12 and Subclass.

13 17. A class action is superior to other potential methods for achieving a fair and
14 efficient adjudication of this controversy. Whatever difficulties may exist in the management
15 of this case as a class action will be greatly outweighed by the benefits of the class action
16 procedure, including but not limited to providing Class and Subclass members a method for
17 the redress and prevention of their injuries and claims that could not, given the complexity of
18 the issues and the nature of the requested relief, be pursued in individual litigation. Further,
19 the prosecution of separate actions by the individual Class and Subclass members, even if
20 possible, would create a risk of inconsistent or varying adjudications and incompatible
21 standards of conduct for defendant.

22 FIRST CAUSE OF ACTION

23 (Violation of Title III of the Americans With Disabilities Act)

24 18. Plaintiff incorporates by reference each and every allegation contained in
25 the foregoing paragraphs.

26 19. Congress enacted the ADA 30 years ago this month upon finding, among other
27 things, that "society has tended to isolate and segregate individuals with disabilities" and that
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1 such forms of discrimination continue to be a “serious and pervasive social problem.”

2 42 U.S.C. § 12101(a)(2).

3 20. Acting upon these findings, Congress declared in the ADA that the purpose of
4 the statute is to provide “a clear and comprehensive national mandate for the elimination of
5 discrimination against individuals with disabilities” and “clear, strong, consistent,
6 enforceable standards addressing discrimination against individuals with disabilities.”

7 42 U.S.C. § 12101(b)(1) and (2).

8 21. Title III of the ADA states that “No individual shall be discriminated
9 against on the basis of disability in the full and equal enjoyment of the goods, services,
10 facilities, privileges, advantages, or accommodations of any place of public accommodation
11 by any person who owns, leases (or leases to), or operates a place of public accommodation.”

12 42 U.S.C. § 12182(a).

13 22. Nike’s retail stores are “public accommodations” within the meaning of Title III.

14 42 U.S.C. §12181(7)(E).

15 23. The ADA provides that it is discriminatory to subject an individual or class of
16 individuals “to a denial of the opportunity of the individual or class to participate in or
17 benefit from the goods, services, facilities, privileges, advantages, or accommodations of an
18 entity” on the basis of a disability. 42 U.S.C. § 12182(b)(1)(A)(i).

19 24. Discrimination under the ADA also includes a failure to “ensure that no
20 individual with a disability is excluded, denied services, segregated or otherwise treated
21 differently than other individuals because of the absence of auxiliary aids and services.” 28
22 C.F.R. §36.303(a). The “auxiliary aids and services” required to prevent discrimination in the
23 full and equal enjoyment of a service provided by a place of public accommodation include
24 modified face masks that reasonably permit others to speechread the wearer, ASL
25 interpreters, and closed captioning.

26 25. Nike’s acts and omissions, as described herein, violate the rights of plaintiff and
27 the Class and Subclass members under Title III of the ADA and its implementing
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1 regulations. Nike’s unlawful discriminatory conduct as alleged herein includes, but is not
2 limited to:

3 a. Discriminatory exclusion and/or denial of goods, services, facilities,
4 privileges, advantages, accommodations, and/or opportunities. 42 U.S.C.
5 § 12182(b)(1)(A)(i);

6 b. Provision of goods, services, facilities, privileges, advantages, and/or
7 accommodations that are not equal to those afforded non-disabled individuals. 42 U.S.C.
8 § 12182(b)(1)(A)(ii);

9 c. Failure “to make reasonable modifications in policies, practices, or
10 procedures, when such modifications are necessary to afford such goods, services, facilities,
11 privileges, advantages, or accommodations to individuals with disabilities, unless the entity
12 can demonstrate that making such modifications would fundamentally alter the nature of
13 such goods, services, facilities, privileges, advantages, or accommodations.” 42 U.S.C.
14 § 12182(b)(2)(A)(ii); and

15 d. Failure to “ensure that no individual with a disability is excluded, denied
16 services, segregated or otherwise treated differently than other individuals because of the
17 absence of auxiliary aids and services.” 28 C.F.R. §36.303(a).

18 26. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C. § 12188
19 and 42 U.S.C. § 12205, plaintiff prays for judgment as set forth below.

20 SECOND CAUSE OF ACTION

21 (Violation of the Unruh Civil Rights Act)

22 27. Plaintiff incorporates by reference each and every allegation contained in
23 the foregoing paragraphs.

24 28. California’s Unruh Act guarantees that persons with disabilities are entitled to full
25 and equal accommodations, advantages, facilities, privileges, or services in all business
26 establishments of every kind whatsoever within the jurisdiction of the State of California.
27 Cal. Civ. Code § 51(b).

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1 under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any
2 amount as may be determined by a jury, or the court sitting without a jury, up to a maximum
3 of three times the amount of actual damages but in no case less than one thousand dollars
4 (\$1,000) and attorney’s fees as may be determined by the court in addition thereto, suffered
5 by any person denied any of the rights provided in Sections 54, 54.1, and 54.2.” Cal. Civ.
6 Code § 54.3(a).

7 37. A violation of the ADA is a violation of the CDPA. Cal. Civ. Code § 54.2(c).

8 38. Nike’s retail stores are “places of public accommodation” and “places to which
9 the general public is invited,” and as such must comply with the provisions of the CDPA.

10 39. Nike’s acts and omissions, described herein, violate the rights of plaintiff and
11 Class and Subclass members under the CDPA.

12 40. Plaintiff prays for statutory damages for the Subclass and attorneys’ fees for the
13 Class and Subclass pursuant to Cal. Civ. Code § 54.3(a).

14 PRAYER FOR RELIEF

15 WHEREFORE, plaintiff prays for the following relief:

16 1. A declaration that Nike is violating the ADA, the Unruh Act, and the CDPA.

17 2. An injunction pursuant to Title III of the ADA and plaintiff’s related state law
18 claims requiring Nike to take all steps necessary to ensure that the services offered in Nike’s
19 retail stores are fully and equally enjoyable to persons who are deaf and hard of hearing,
20 including but not limited to providing clear masks to salespersons and other employees in
21 Nike’s California retail stores, or other accommodations such as ASL interpreters or closed
22 captioning devices.

23 3. Damages according to proof, including applicable statutory damages pursuant to
24 Cal. Civ. Code §§ 52 and 54.3.

25 4. Reasonable attorneys’ fees and costs as authorized by 42 U.S.C. § 12188, Cal. Civ.
26 Code § 52, Cal. Civ. Code §54.3, and/or Cal. Code Civ. Proc.1021.5.

27 5. Such other and further relief as the Court deems just and proper.
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Dated: July 29, 2020

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