

REVIEW DRAFT

counsel to Class Counsel that memorialize information that Nike previously provided to Class Counsel. The first of these letters specifically responds to requests for additional information that Class Counsel initially had addressed to the Diversity Consultant. I have reviewed the two letters and believe they accurately and fairly address the issues raised by Class Counsel, who also are satisfied with Nike's responses.

B. Specific Areas of Nike's Performance under the Consent Decree

Following is my review of specific matters, based on Nike's April 2, 2010, Progress Report to the Diversity Consultant, which Nike also provided to Class Counsel.

1. The Racial and Ethnic Breakdown of Niketown Chicago's Non-exempt Workforce.

a. Non-exempt Employees.

The following table breaks out the racial and ethnic composition of Niketown Chicago's ("NTC") non-exempt workforce as of October 2009. As the table shows, the demographics of the workforce have not changed significantly over the term of the Consent Decree, even with the Reduction-in-Force, previously reported.

Racial and Ethnic Composition of NTC's Non-exempt Workforce

Business Title	Af. Amer.	Asian	Hispanic	White
SEASONAL				
Visual Specialist				
Full-time	2	1	1	3
Part-time	0	0	0	0
Product Flow				
Full-time	8	1	9	3
Part-time	0	0	0	0
Athlete				
Full-time	9	1	2	4
Part-time	0	0	0	0
REGULAR				
Visual Specialist				
Full-time	2	1	2	0
Part-time	0	0	0	0
Product Flow				
Full-time	4	0	2	0
Part-time	13	0	1	2
Athlete				
Full-time	6	0	0	2
Part-time	29	4	10	9
OTHERS	3	0	3	5
TOTAL	75 (54%)	7 (0.5%)	29 (21%)	28 (20%)

b. NTC Leadership Team

As the following table shows, over the last three reporting periods (October 2008 through October 2009), the racial and ethnic composition of NTC's Leadership Team remained fairly stable. However, Class Counsel has expressed some concern about the recent replacement of James Ullis, the former Assistant Store Manager, by John Ugaste. Mr. Ullis is African American. Mr. Ugaste is white. Mr. Ullis left NTC to become manager of another Nike store. Mr. Ugaste,

an external candidate, was selected from a group of 14 applicants that included two African Americans. As discussed below, under NTC Hiring, there is nothing to suggest that Mr. Ugaste's selection was unfair or discriminatory, or that it was the product of discriminatory practices.

NTC Leadership Team (October 2008 - 2009)

REPORTING PERIOD	Oct 2008	Jan 2009	Oct 2009
EXEMPT			
1. Head Coach (Store Manager)			
African American	1	1	1
Hispanic			
White			
2. Asst. Head Coaches (Assistant Store Managers)			
African American	1	1	0
Hispanic	0	0	0
White	3	3	3
NON-EXEMPT			
3. Coaches (Department Heads)			
African American	1	1	1
Hispanic	1	1	1
White	4	4	4
4. Specialists (Store Leads)			
African American	4	4	5
Hispanic	3	3	5

The ethnic diversity of the Leadership Team is important in sustaining the progress NTC has made under the Consent Decree. NTC should make a determined effort to maintain such diversity. This is an area where the Career Development Program, discussed below, can make a

contribution by helping to develop internal candidates for leadership positions. To do that, however, Nike must maintain the quality of that Program, including the quality of Nike managers who serve as mentors.

3. NTC Hiring

Since my Third report, NTC has hired several new employees, for both exempt and non-exempt positions.

a. New Hires - Exempt

During the period June through October 2009, James Ulis Assistant Head Coach, Business Operations, left NTC to accept a job as Head Coach (manager) of the Nike Chicago Factory Store. Mr. Ulis is African American. NTC hired John Ugaste to replace Mr. Ulis.¹ Mr. Ugaste is white.

Three-member panels interviewed fourteen candidates for the Assistant Head Coach position. Each panel included at least one member who was African American; half of the panels included two African American members. The panel that interviewed Mr. Ugaste had one African American member (the store manager) and two white members. Twelve of the candidates during this round were external applicants; two were internal candidates. There were two African American candidates, both external. The African American candidates were ranked seventh and tenth among the fourteen candidates and did not make the second round of interviews.

Four candidates were interviewed during the second round by two member panels. One member of the panel was African American and one was white. All of the candidates

¹ Mr. Ugaste's start date was November 16, 2009. He accepted the offer on October 27, 2009.

interviewed during the second round were external applicants; three were white and one was Hispanic. Mr. Ugast received the highest rating of the four candidates.

I find nothing in the records relating to the hiring of Mr. Ugaste that appears inconsistent with Nike's policies or that otherwise suggests the decision to hire Mr. Ugaste might have been discriminatory.

b. New Hires -- Non-exempt

NTC hired 44 non-exempt employees during the period June through October 2009. All of the new employees were full-time seasonal (temporary employees who worked 40 hours per week); six of the new hires had previously worked for NTC. The following table breaks down the new employees by position title and ethnic group.

POSITION	<i>Asian</i>	<i>Af. Amer.</i>	<i>Hispanic</i>	<i>White</i>	<i>Total</i>
ATHLETE	1	7	3	3	14
ATHLETE II	0	2	0	1	3
PRODUCT FLOW ATHLETE	1	8	8	3	20
VISUAL SPECIALIST	1	2	1	3 ²	7
TOTAL	3	19	12	10	44

² One candidate, Jane Menicucci, is identified as "white" in the list of new hires, but as "black" on the chart identifying the panel interviews. I have assumed she is white. If that is not true, it would put the ethnic distribution of employees in this job category more in line with all other job categories.

The following table sets out the percentage of new hires by ethnic group, for each job title and in the aggregate.

POSITION	<i>Asian</i>	<i>Af. Amer.</i>	<i>Hispanic</i>	<i>White</i>	<i>Total (n)</i>
ATHLETE (%)	7	50	21.5	21.5	14
ATHLETE II (%)	0	67	0	33	3
PRODUCT FLOW ATHLETE (%)	5	40	40	15	20
VISUAL SPECIALIST (%)	14	28	14	43	7
TOTAL PERCENTAGE (ALL HIRES)	7	43	27	23	44

These results are not remarkable, although the new hires for the position of Visual Specialists presented a slightly different racial and ethnic profile than the non-exempt workforce generally. The seven new hires for visual specialists were distributed across all four ethnic groups, although the number of white employees hired, three, was the largest number for any single ethnic group.³ The two highest rated candidates were Asian and Black, respectively. Except for those two, the five other new hires scored an identical 3 for their panel interviews, including the three white employees; the only other candidate to receive a rating of 3, an African American, turned down the offer of employment. The two remaining candidates who were interviewed, one Black and one Hispanic, had interview ratings substantially below 3.

The new hiring, in the aggregate and for particular job categories, appears to have been made in compliance with Nike's policies, and does not appear to have been discriminatory in any way. Significantly, there were no complaints relating to hiring during this most recent reporting period.

³ This was the only job category in which whites made up the largest group of employees.

4. Corrective Action (Non-exempt)⁴

The following table summarizes the corrective action at NTC during the period June through October 2009.

Level	Asian	Af. Amer.	Hispanic	White	Total
Record of Coaching	1	4	2	1	8
Written Reminder	1	2	1 ⁵	0	4
Final Warning	0	1	1	0	2
TOTAL	2	7	4	1	14

PERCENTAGE	14	50	29	07	100
------------	----	----	----	----	-----

I do not find these results remarkable. The corrective actions appear to have been consistent with Nike's policies, and do not appear to be the product of any discriminatory practices. The number and distribution of corrective actions also are consistent with the results of previous reporting periods; in fact, they are slightly less weighted against African American employees.

5. Involuntary Terminations (Non-exempt)

The following table summarizes the involuntary terminations of non-exempt employees that occurred during the period June through October 2009. All but two of the terminations were due to the previously reported Reduction-in-force.

⁴ Except as noted, all corrective action was attendance-related.

⁵ Performance-related.

Involuntary Terminations (June 2009 – October 2009)

	Number (%)	Reason
Asian	00 (00)	RIF
Af. Amer.	16 (57) 02 (07)	RIF LP Theft
Hispanic	05 (18)	RIF
White	05 (18)	RIF
Total	28	

I do not find these results remarkable. The two non-RIF terminations, involving employee-theft, appear to have been warranted; the two employees did not appeal from the terminations.

6. Complaints

There were thirteen new complaints resolved during the period June through October 2009. Five of the complaints were filed by African American employees. Four complaints were filed by Hispanic employees. Three complaints were filed by two white employees. One complaint was filed anonymously. None of the complaints explicitly alleged race discrimination.

The anonymous caller alleged that a white employee inappropriately challenged the identity of the brother of the caller when he tried to make a purchase, told him he did not look like his sibling, and advised him to keep his receipt in case he needed to return the purchase. The caller alleged this conduct, by a supervisor, was inappropriate. The caller also alleged that he/she feared retaliation if his/her identity was revealed. The caller did not identify his/her own

race.

The anonymous complaint was made against a white supervisor. The store manager counseled the employee and explained why her conduct was unacceptable. There was no claim that the supervisor's conduct was motivated by race, but the counseling seemed appropriate, even if it had been. NTC did not find that the conduct was intentionally offensive. According to the report, the employee "understood and was very apologetic."

Except for the anonymous complaint, the complaints during this period were not remarkable. Most of the complaints concerned administrative actions that were questioned, but not characterized as intentional misconduct. The individuals against whom complaints were made had diverse racial and ethnic backgrounds. Four of the complaints were made about the conduct of African American employees; two of those were made by African American employees.

I have not seen anything in the last three reporting periods which suggests that the complaint process is not working or that NTC is not taking complaints seriously or that the store is not fairly resolving complaints.

7. The Career Development and Mentoring Program

The second session of the Career Development Program is underway. The size and racial/ethnic composition of the new class of participants reflect the additional steps Nike took to increase the participation of African-American employees, including employees from Product Flow. The new class has twenty-two employees, including seven employees from Product Flow (31%). Ten of the participants are African American (45%); two are Asian (9%); four are Hispanic (18%); and six are white (27%).

Class Counsel previously had raised questions about the lack of participation by

employees from Product Flow, about the number of African American participants, and about the Selection Committee considering the subjective the input of managers. Nike attempted to address all of these concerns.

Twenty-one employees originally applied for the program, including several employees who were under Final Warnings status on account of attendance-related misconduct. Two of the African American applicants also had current performance ratings below Satisfactory, which disqualified them under the terms of the Program. NTC selected all of the employees who submitted applications, including the two who did not meet the performance criterion. As a result of accepting these two applicants, NTC reopened the program and gave other employees with below Satisfactory ratings an opportunity to apply. One additional employee applied, a white employee from Product Flow; NTC accepted him into the Program, bringing the total number of participants to twenty-two. Among the seven employees from Product Flow, three are African American, two are white, one is Asian, and one is Hispanic.

NTC's decisions to increase the size of the current class and to waive the performance rating criterion appear to have been in response to concerns previously expressed by Class Counsel, but I am concerned that the decisions, at least in the long run, may weaken the Program. First, the range of backgrounds and experiences is significantly greater when employees from Product Flow are included. That may force NTC to modify the curriculum to reach the broader group, possibly to include more elementary subjects. Second, having a class of twenty-two will significantly increases the demand for mentors and put considerable pressure on NTC to maintain the quality of mentoring for all of the participants. Third, having twenty-two employees diverted from their work may lead to pressure on some employees to miss sessions of the Program due to the demands of work.

I believe all NTC employees have an interest in maintaining the quality and legitimacy of the Career Development and Mentoring Program. NTC should evaluate carefully the experiences of this current class to ensure that its size and work/experience diversity have not weakened the program. NTC also should consider breaking the Program into two sections, which alternate, one for more prepared employees, and a second for employees with more limited preparation. This also would allow the Program to employ more experienced NTC employees as mentors in the basic section.

In their comments on the draft of this Report, Class Counsel reiterated the importance of "hav[ing] Product Flow employees included [in the Program], as the program was intended to benefit African Americans in lower-level positions." I agree with this view. Nike should take concrete steps to ensure that employees in lower-level jobs are given meaningful opportunities to participate in the Career Development and Mentoring Program. I strongly urge the Company to evaluate the experiences of such employees in the current class to determine how best to achieve that goal. This Program has the potential to greatly increase the internal and external opportunities of NTC employees who made up the class in this case.

8. Benefits Review and Adjustments

NTC appears to be complying with its Benefits Policy, by offering employees who consistently work more hours during a quarter than their status require the opportunity to change their status to the higher level and receive benefits commensurate with that level. For the most recent audit, ten employees qualified to change their status and all accepted the offer.

In response to the suggestion of Class Counsel, NTC has proposed a written form that will be used to document that employees have been offered and declined the opportunity to change their employment status under the Benefits Policy. I suggest that Nike modify the

proposed acknowledgment form substantially as follows:

I understand that, because the number of hours I worked over the past quarter exceeded the number of hours I am required to work as a (Part-time Over/Part-time Under) employee, I am entitled to have my status changed to (Full-time/Part-time-Over) and to receive benefits associated with the new status. I am declining the opportunity to change my status for the coming quarter. In the future, I understand that Nike may schedule me fewer hours of work, consistent with my current status. By declining to change my status at this time, however, I am not declining the opportunity to change my status in the future, if I become eligible again to do so.

This modification is to make clear that an employee who declines to change his/her status following a particular quarter retains the right to change his/her status in the future if he/she again qualifies under the Policy.

CONCLUSION

I believe Nike has adopted and implemented all of the policies and programs required by the Consent Decree and otherwise has satisfied fully its obligations under the Decree.


James E. Coleman, Jr., Diversity Consultant

May 18, 2010



731 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
(312) 460-5000
fax (312) 460-7000
www.seyfarth.com

(312) 460-5928
dbaffa@seyfarth.com

April 2, 2010

PRIVILEGED AND CONFIDENTIAL

Prof. James E. Coleman, Jr.
Duke University School of Law
Room 3180
Box 90360
Durham, NC 27708-0360

Re: *Smith, et al. v. Nike Retail Services, Inc.*
Case No. 03 C 9100

Dear Professor Coleman:

As we discussed last week, this letter summarizes our meeting with Class Counsel (Beth Davis) in the above-referenced matter on March 18, 2010, during which the parties discussed Nike's submissions under the Consent Decree and went over the points raised in Beth Davis' letter to you dated January 15, 2010. We have provided a draft of this letter to Ms. Davis to make sure we have accurately reflected the parties' agreed findings and next steps.

Timing and Future Reports

As we have discussed, the parties agree that it is not necessary for you to file a supplemental report, because the parties have worked together to address Class Counsel's outstanding questions. We ask only that you reflect the parties' discussions in your final submission to the Court, along with your own assessment of these issues, which we ask be submitted on an accelerated schedule, by April 30, 2010. You and Class Counsel are each receiving simultaneously with this letter Nike's fourth quarter submission for the two-year Consent Decree period, and the parties have agreed to conduct joint calls with you to resolve issues in connection with completion of the final report to help expedite the process

Issues Raised in Class Counsel's January 2010 Letter

A. Pay Issue

Class Counsel raised an issue relating to the conversion of formerly commissioned sales associates to hourly rates of pay, and questioned whether a pay disparity exists in hourly rates as a result of prior commissioned status.

ATLANTA BOSTON CHICAGO HOUSTON LOS ANGELES NEW YORK SACRAMENTO SAN FRANCISCO WASHINGTON, D.C. BRUSSELS



Prof. James E. Coleman, Jr.
 April 2, 2010
 Page 2

We have discussed these allegations with Class Counsel and went over Nike's recent submissions to you on this subject. Class Counsel's concerns were satisfied based on the following information based on October 2009 hourly rate data:

- We went over the statistical findings contained in the memorandum you received from Zev Eigen, our Econometrician, who reviewed hourly rates of pay for employees in the Athlete job title (formerly sales associates and cashiers), and discussed Nike's position that there is no statistically significant difference in mean hourly rates between African-American and non-African-American employees, nor between Caucasian and African-American employees.
- I reported to Class Counsel that 34 out of 58 employees in the Athlete job title were African-American, and that out of the top 15 hourly rates, 11 were held by African-American employees, two by Caucasian employees, one by an Asian employee, and one by a Hispanic employee. In addition, the top two hourly rates were held by African-American employees. We also shared with Class Counsel on a confidential basis the approximate pay range spread between the top and bottom pay rates.
- The third and fourth highest hourly rates were held by Caucasian employees, and each of the top-five Athletes by hourly rate had the most seniority among Athletes in Niketown Chicago, all having been hired between 1992 and 1998. In addition, the Athlete with the most seniority among Athletes was Caucasian, even though he did not have the highest hourly rate.
- Reviewing the lowest 15 hourly rates as of October 2009 in the Athlete job title, 11 of the 15 were also held by African-American employees, two were held by Caucasian employees, and two were held by Hispanic employees.

B. Mentoring Program

Class Counsel raised a concern regarding the future composition of the next round of the Career Mentoring and Development Program, hoping that Nike would take steps to make the program more inclusive, include a significant number of African-American employees, and include employees from Product Flow.

As we have discussed, Nike instituted a number of strategies to expand participation in the program. Nike expanded eligibility to part-time-under employees, advertised participation more actively in Product Flow, and solicited the help of those who graduated from the first program to serve as "ambassadors" and help recruit others. As a result, the following employees applied for the second round of the Career Development & Mentoring Program:

Name	Ethnicity	Job Title	Hire Date	Status
Anthony Hayes	African American	Product Flow Athlete (S&R)	8/23/1996	FT
Brian Vaxter	African American	Athlete	8/8/1994	FT
DeOtis Tole	African American	Athlete	11/5/2007	PT over
Kameron Locke	African American	Athlete	9/17/2008	PT over



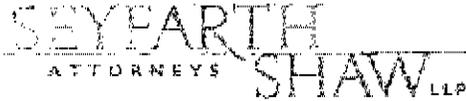
Prof. James E. Coleman, Jr.
 April 2, 2010
 Page 3

Kevin Bourn	African American	Athlete	4/13/1998	FT
Maurice Sterling	African American	Product Flow Athlete (S&R)	7/30/1997	FT
Meka Griffin	African American	Athlete	4/1/2003	PT over
Terry Henley	African American	Athlete	2/24/2003	PT over
Timothy Franklin	African American	Athlete	9/17/2008	PT under
Zellanda Harris	African American	Product Flow Athlete (S&R)	8/20/2008	PT under
Fedry Purwonegoro	Asian	Athlete	9/17/2008	PT under
Reagan Foronda	Asian	Product Flow Athlete (S&R)	9/15/2009	PT under
Alfonso Rodriguez	Hispanic	Athlete	9/15/2009	PT under
Christina Gaytan	Hispanic	Athlete	9/17/2008	PT over
Elsa Torres	Hispanic	Product Flow Athlete (S&R)	9/15/2009	PT under
Michael Peralta	Hispanic	Athlete	9/17/2008	PT under
Alex Brubacher	White	Athlete	9/17/2008	PT over
Joseph Guinan	White	Athlete	8/29/2005	PT under
Liz Anderson	White	Athlete	5/27/2009	PT over
Lorenc Tompleton	White	Product Flow Athlete (S&R)	9/15/2009	PT under
Rudolph Jensen	White	Athlete	9/9/2008	PT under

All applicants were accepted into the program. Notably, several employees are on Final Warning status due to attendance, but that is not a disqualification for the program. In addition, two applicants (both African-American) were not eligible to apply for the program because their most recent performance rating was lower than the published criterion of having at least a Successful rating. NTC, however, chose to waive the requirement, and accept these employees into the program anyway. Because the admission of these two individuals was contrary to the posted eligibility requirement, NTC affirmatively spoke with the five other associates with less than a Successful performance rating to determine whether they self-selected out of applying, and wished to do so in light of the waived requirement. Four of the five employees declined, and one agreed to submit an application on Monday of next week, and presumably will be accepted into the program.

The kick-off for the new rotation is expected to begin the week of April 13th. In addition to following the modules and format of the first rotation, the second rotation will include a number of new techniques based upon feedback from the first session, including:

- **Phone-screen training:** following upon the successful "mock interview" module, employees in this rotation will also experience a mock "phone screen" as well. These mock interviews provide instant feedback and experience to employees.
- **Executive Advisors:** Three former Mentors (two African-American, one Caucasian) will now serve as "Executive Advisors" for the second rotation, helping to oversee the mentoring process, providing feedback on modules, coaching mentors, and participating in sessions.
- **Peer Mentoring:** Some of the former participants in the first rotation will serve as "peer mentors" for the second round mentees. Final participants are still volunteering for these roles.



Prof. James E. Coleman, Jr.
April 2, 2010
Page 4

- **Presentation Skills:** This new module will be added and will include three elements: Stage Presence, Formal Presentation Development, and Facilitating Audience Q&A.

Although Class Counsel is encouraged by NTC's efforts in this regard, they still have concerns about the low numbers of African-American Product Flow employees involved in the program and have encouraged NTC to continue its efforts to expand participation of both African-Americans and Product Flow employees.

C. Benefits Review

Class Counsel has requested that NTC introduce the use of a paper form in benefits audits, by which employees who are offered an increase in benefit status can accept or decline the invitation. For employees that decline the invitation, we have drafted a simple draft form that includes the following sign-off to be used for each quarterly review:

I understand that my hours worked over the most recent quarter qualified me to change my employment status for the current quarter. I decline to do so at this time. I understand that in the future, Nike may schedule me fewer hours consistent with my current employment status. Even if my hours remain above my current employment status, however, I am not interested in changing my employment status (or receiving the benefits entitlement that corresponds with the employment status), over the coming quarter.

We still need appropriate approvals internally to finalize the form, but wanted to run this draft language by Class Counsel and you to see if you had input before we finalize the new form.

D. Reduction-in-Force

We discussed the fact that Class Counsel now has the report requested in their January 2010 letter. If Class Counsel has further questions on this issue, they will direct those questions to both NTC and you. As with all topics discussed in this letter, Class Counsel is also interested in receiving any further assessment you have on this subject.

E. Discipline & Attendance

As previously agreed with Class Counsel, I conducted a web-enabled telephone conference with you on Thursday, March 25, 2010, and shared my computer screen with you to demonstrate the following:

- NTC's current attendance tracking Excel tool, which automatically tabulates attendance points based on the parameters in the Attendance Policy once the daily tardy, absence, or leave-early information is input into the chart.

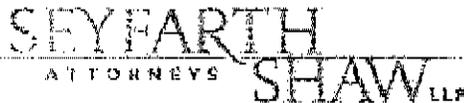


Prof. James E. Coleman, Jr.
April 2, 2010
Page 5

- NTC's late 2007 and 2008 former attendance tracker, also in Excel, which similarly required and received manual input of daily tardy, absence or leave-early information, but did not take the extra step of automatically scoring and rolling-up scores for individual employees.
- Our chart developed internally for analysis purposes, which applies the current scoring system against the 2007-2008 actual attendance incidents, as a means of analyzing the consistency and appropriateness of the decision to carry-over attendance related discipline.

We went through the same detailed review with Class Counsel, and I showed Beth these same tools and results on my laptop computer. In the end, the parties are satisfied that the following is true:

- In 2008, a Nike employee was comparing punch and scheduling data to enter manual tardiness, absences and leave-early information into a spreadsheet-based attendance tracking system, just as occurs today.
- In 2008, the review, scoring and roll-up of attendance information was not occurring consistently, and the result was that employees who received attendance-related discipline received it based on inconsistent numbers of infractions, while other employees received no attendance-related discipline at all.
- All employees with 2008 carry-over discipline had such discipline as the result of late 2007/2008 infractions; the discipline did not cascade from or build off of earlier attendance records.
- Applying the current NTC attendance rules and scoring to 2008 discipline, only two Caucasian employees were in the group containing the ten worst attendance records, and neither was employed by NTC when the new attendance policy was rolled out in November, 2008.
- Comparing the list of NTC employees who began the new attendance process with carry-over discipline to the re-scoring of 2008 discipline, while it is clear that other employees should have had carry-over discipline as well, there is no evidence that such inconsistency occurred along racial lines. In fact, to the contrary, members of the Class generally benefited by the inconsistency in assigning discipline, in that numerous African-American employees began the process without carry-over discipline even though their attendance merited discipline as compared to others who received it.
- Looking specifically at the four employees who were subsequently terminated by NTC due in part to the carry-over discipline (one Hispanic, three African-American), the review of 2008 attendance reveals that they were situated among the employees with ongoing poor attendance. In addition, only four employees had worse attendance in 2008 but received no carry-over discipline, and the protected categories of those four employees is identical to the four whose employment was terminated (one Hispanic, three African-American).



Prof. James E. Coleman, Jr.
April 2, 2010
Page 6

As we have discussed with you and with Class Counsel, based on these results, Nike's position is that the decision to carry-over prior disciplinary thresholds into the new attendance process was not tainted by any alleged past discrimination with regard to attendance monitoring, and as such the termination of the four employees affected was not a violation of the Consent Decree. Class Counsel is interested in your thoughts on this issue.

F. Segregation Allegation.

At the end of the January 2010 letter, Class Counsel raised a question regarding whether and to what extent employees may be getting steered into Product Flow positions versus Athlete positions. As we discussed with you and with Class Counsel, we asked our Econometrician to analyze the demographics of the Product Flow and Athlete job titles, as compared to overall NTC demographics, and determine whether there was any statistically significant difference in the composition of those departments.

Not only is there no statistically significant difference in the demographics of the two areas, there is no statistically significant difference in the mean hourly rates between the two areas. Said another way, while the average hourly pay for an Athlete is about a dollar higher than in Product Flow, the distribution of hourly rates is such that the differences are not statistically significant.

As a result, Nike's position is that not only is there no steering, it cannot effectively be said that working in Product Flow is less desirable than being an Athlete in the first instance. We will provide the segregation analysis numbers to Class Counsel for their review.

The remaining portions of Class Counsel's January 2010 letter were largely follow-up questions relating to suggestions or ideas raised in your first two filed reports. While we discussed these points in our meeting, we agreed that it might make sense to convene a joint call to discuss any lingering questions raised in the above materials, as well as cover these additional points. NTC will also be providing Class Counsel with further requested information (e.g., a variety of racial breakdowns, documentation on individuals who have been disqualified from promotions).

Thank you for attention to this matter and for your assistance in working with the parties to address these questions and issues. Please let us know when you might be able to arrange a call to discuss these matters further.

Best regards,

SEYFARTH SHAW LLP

A handwritten signature in black ink, appearing to read "D. S. Baffa".

David S. Baffa

DSB:amd

cc: Beth Davis, Esq.

SEYFARTH
ATTORNEYS **SHAW** LLP

131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
(312) 460-5000
fax (312) 460-7000
www.seyfarth.com

Writer's direct phone
(312) 460-5928
Writer's e-mail
dbaffa@seyfarth.com

May 4, 2010

Beth A. Davis, Esq.
Noelle Brennan & Associates, Ltd.
20 South Clark Street
Suite 1530
Chicago, IL 60603

Re: Smith, et al. v. Nike Retail Services, Inc., Case No. 03 C 9100

Dear Beth:

This letter summarizes our discussions on Friday, April 30th and on Monday, May 3rd, as well as our joint call with the Monitor on May 3rd. We have summarized your questions and provided confirmation of our responses. We look forward to continuing to work through any remaining questions as this process draws to a close.

In our calls, we went through Nike's fourth-quarter submission. Below is a brief summary of our discussions, and our answers, clarifications and confirmations.

- You asked why as of October 2009 there did not appear to be any Athlete I titles at NTC, and everyone in the role had an Athlete II title. As we discussed, the reason is that when NTC converted to the Athlete I and Athlete II designations, everyone already working in the former sales or cashier role was made an "Athlete II" (the higher-level title). Only new, inexperienced hires will come in at the "Athlete I" level, and in time would be promoted into the Athlete II title.
- You asked if there are plans to bring back folks to NTC who were previously terminated as part of the reduction-in-force. The answer is that anyone who was terminated as part of the reduction-in-force is eligible to reapply for employment and be rehired, but there is no specific "recall" procedure or special "recall" rights. By operation of the plan terms, rehire at Nike can trigger a sacrifice or repayment obligation of termination benefits. Three employees (Joseph Guinan (Caucasian), Daniel Gomez (Hispanic), and Lisa Canto (Asian)), were rehired in mid-September 2009 into Seasonal positions, each with 120-day assignments (Guinan and Gomez were hired into Seasonal Product Flow positions, and Canto into a Seasonal Visual Specialist role). We are not aware of any other previously RIF'd employee applying for a role prior to October 31, 2009.

ATTACHMENT 2

12291875v.1

ATLANTA BOSTON CHICAGO HOUSTON LOS ANGELES NEW YORK SACRAMENTO SAN FRANCISCO WASHINGTON, D.C. BRUSSELS



Beth A. Davis, Esq.
May 4, 2010
Page 2

- In connection with the involuntary termination log entries, you asked about what a “fraud return to gift card” means, and what a “merchandise handoff” means. We have confirmed with Reggie Holliday, the Territory Loss Prevention Manager, that a “fraud return to gift card” refers to a fictitious return created by returning either stolen or employee-discounted merchandise without a receipt at current value, generating a gift card for later use in the store. A “merchandise handoff” refers to when a transaction is rung up at the register and then voided, but the merchandise is bagged and handed across to the customer anyway.
- You asked us to identify what “M&R Specialist” stands for and what that work involves. M&R stands for maintenance and repair, and the role involves repairing items that can be fixed internally, as well as coordinating and dealing with vendors who service things such as cash registers, computers, etc.
- You asked for clarification on the Anthony Hayes and Craig Pearson investigation described in the Complaint Log, and specifically what the interviewed witnesses said about the incident. We have raised this with Kevin O’Malley, Territory HR Manager -- East, and he will report back shortly. Both he and Heather Smith, the Ombudsperson, recalled from memory that any witness input was unremarkable and unhelpful in resolving this “he said/he said” situation.
- You asked about the appeals log entry for Terry Henley. We spoke with Heather Smith, Ombudsperson. The focus of Terry’s “appeal” was based on the lack of follow-up on his corrective action. While Terry did suggest that the reason for his misconduct toward Jose Rodriguez was due in part to management ignoring his stated concerns about Jose’s management style, he admitted his conduct was wrong, and argued simply that the discipline must not have been a big deal in light of the lack of follow-up. Ultimately NTC decided not to rescind the discipline on that basis.
- You asked for confirmation about the hours “triggers” for the benefits audit. The hours triggers are 20 hours (which differentiates part-time-under-20-hours versus part-time-over-20-hours employees), and 30 hours (which differentiates full-time from part-time-over-20-hours employees).
- You also asked about the “Other Earnings” tabs in the Benefits Audits. These tabs are generated at corporate and are not part of the benefits review (they are normally removed by the Ombudsperson before sent our way). They are the result of culling out the hours worked -- which is all that counts for benefits-category purposes -- from hours paid for PTO, holiday pay, and other types of earnings.
- You asked whether Jenn Falor was indeed the successor for Addie Johnson in terms of the types of roles Addie served as a Compliance Officer. She is the successor. Heather Smith, the Ombudsperson, will continue to play a similar role going forward at NTC as well.



Beth A. Davis, Esq.
May 4, 2010
Page 3

- You asked for additional information regarding our April 2, 2010 letter and the numbers underlying our "segregation" analysis (as referenced in that letter). As we described, there is no statistically significant difference in the demographics of the Athlete and Product Flow job titles as of the October 31, 2009 data, nor is there any statistically significant difference between mean hourly rates between the two job titles:
 - Out of 41 Product Flow employees, 24 are African-American (58.5%). Out of 58 Athlete employees, 34 are African-American (58.6%). The ratio is almost identical.
 - The average rate for Athletes is an extra \$1.05 per hour as compared to the average Product Flow rate. This is not a statistically significant difference in rate, particularly given the range of rates involved (there are particularly long-tenured Athletes who drive up the average). In fact, if you compare for example the 35 non-seasonal Athletes who started between 2006 and 2008 to the corresponding population of 14 non-seasonal Product Flow employees who started between 2006 and 2008, the pay range for Athletes in that category was \$9.50 to \$10.19 per hour, whereas the pay range for Product Flow was a *higher* range, from \$10.39 to \$11.05 per hour. Again, there is simply not a material difference in rates.
- You asked for clarification on several employees who were impacted in the reduction-in-force, and why the individuals were selected in light of their seemingly higher seniority. Here are the individuals you asked about and the explanations, which I have confirmed with Heather Smith, Ombudsperson, who managed the process:
 - Charles Gaines was a full-time sales associate who, due to seniority, could only be offered a part-time position. He declined the demotion, and accepted the RIF package instead.
 - Edgar Miranda was exactly the same situation as Charles Gaines.
 - Alexander Kuspar was a custodian, and the custodial position was eliminated system-wide. He was not viewed as having the experience to take an Athlete role or other role at NTC.
 - Kendra Walters was a part-time employee who was among a handful of "A-Band" employees (which represents a higher pay band than "V-Band" ("V" is the lowest, then "A")), in an accounting assistant/retail role. As part the reorganization, the decision was made to maintain only one full-time accounting assistant/retail role. Kendra, because of her seniority, was first offered that position, but she declined it. She was next offered a demotion to an A-Band, part-time sales position, but declined it as well. Because there was no position for her that represented a lateral transfer or a promotion and her own position was going away, she remained eligible to receive, and ultimately chose to accept, a RIF package.



Beth A. Davis, Esq.
May 4, 2010
Page 4

You also followed up on some questions you had from the Monitor's prior reports, and we discussed these on our calls, as well as our call with the Monitor on May 3rd, as follows:

- You asked about the CBS (competency-based-selection) questions used by NTC in hiring. As we discussed with the Monitor, the CBS redesign discussions were started in anticipation of the planned store concept redesign, which never took place. We did, however, provide today updated CBS questions reflective of the new positions. They are changed only slightly and as you will see, the questions are certainly germane and appropriate for applicants for roles at NTC.
- You asked about openings at the General Business Unit, and any placements there. As we discussed with the Monitor, there has been much greater awareness and exchange of information between the GBU and NTC, particularly through the Career Development & Mentoring Program. A number of the mentors are from the GBU, and there is much greater awareness of NTC's program at GBU. While there have not been placements from NTC to the GBU, there have been a handful of openings and applicants for those openings from NTC. We remain encouraged by these exchanges and the increased cross-awareness.
- You asked about language in our policies regarding corrective action that is "generally disqualifying" for promotion. As we discussed with the Monitor, nobody has been rejected from a promotional opportunity due to a disqualifying corrective action. In general, this disqualification is only a theoretical possibility. We are aware of and have informed Human Resources and NTC management of the dangers of subjective decisionmaking under policy carve-outs like these, as the Monitor and we discussed, and we have committed to inform candidates specifically about the disqualification when and if such a situation arises. The reality of the process, however, is that past performance and ratings are simply taken into account as part of the regular promotion process.
- During the call with the Monitor, as well as our meeting back in March, you raised questions about NTC's use of paper applications and the use of an electronic application process. Now that hiring activity has increased, we are taking steps to make sure that applicants who walk into NTC seeking a paper application are given information to allow them to access free computer services as needed to apply on-line, and cards for this purpose have been re-ordered. Employees who apply for positions internally are given the information and the opportunity to apply for positions on-line using an in-store computer.
- Finally, we discussed with the Monitor the implementation of an approach whereby individuals who decline an increase in benefit status following a benefits audit would acknowledge in writing that they had declined the opportunity. In addition to our proposed language, the Monitor has asked us to make more clear that denying the status now does not preclude the employee from being offered or accepting a status upgrade should the situation arise again in a subsequent quarter.



Beth A. Davis, Esq.
May 4, 2010
Page 5

Beth, we believe this letter, together with the letter we jointly reviewed and submitted dated April 2, 2010, addresses each of the questions and issues you raised in our meetings and discussions together, as well as with our joint session with the Monitor on May 3rd. If this letter triggers any additional questions or issues, please let us know. We are providing a copy of this letter simultaneously to the Monitor for his review and incorporation into his final report, as we agreed.

Very truly yours,

SEYFARTH SHAW LLP

A handwritten signature in cursive script that reads "David S. Baffa, Esq." with "ESQ." written in small, all-caps, sans-serif font at the end of the signature.

David S. Baffa

DSB:amd

cc: Professor James Coleman