

J. Matthew Donohue, OSB NO. 067542

MattDonohue@MarkowitzHerbold.com

Shannon Armstrong, OSB No. 060113

ShannonArmstrong@MarkowitzHerbold.com

MARKOWITZ HERBOLD PC

1211 SW Fifth, Suite 3000

Portland, OR 97204

Telephone: (503) 295-3085

Fax: (503) 323-9105

Jeffrey M. Ostrow, Florida Bar No. 121452

ostrow@kolawyers.com

Scott A. Edelsberg, Florida Bar No. 0100537

edelsberg@kolawyers.com

KOPELOWITZ OSTROW P.A.

200 SW 1st Avenue, 12th Floor

Fort Lauderdale, FL 33301

Telephone: (954) 525-4100

Fax: (954) 525-4300

(pro hac vice to be applied for)

Hassan A. Zavareei, California Bar No. 181547

hzavareei@tzlegal.com

Jeffrey D. Kaliel, California Bar No. 238293

TYCKO & ZAVAREEI LLP

1828 L Street, NW, Suite 1000

Washington, DC 20036

Telephone: (202) 973-0900

Fax: (202) 973-0950

(pro hac vice to be applied for)

Wayne S. Kreger, California Bar No. 154759

wayne@kregerlaw.com

LAW OFFICES OF WAYNE S. KREGER, PA

100 Wilshire Blvd., Suite 940

Santa Monica, CA 90401

Telephone: (310) 917-1083

Fax: (310) 917-1001

(pro hac vice to be applied for)

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

MONIKA TAYLOR, individually and on behalf of all others similarly situated,

Plaintiff,

v.

NIKE, INC.,

Defendant.

Case No.: _____

**CLASS ACTION ALLEGATION
COMPLAINT**

**Unfair Or Deceptive Trade Practices Action
(28 U.S.C. § 1332)**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff, MONIKA TAYLOR (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge as to allegations regarding Plaintiff and on information and belief as to other allegations:

INTRODUCTION

1.

This is a civil class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant, Nike, Inc. (“Nike”), arising from its deceptive and misleading labeling and marketing of merchandise it sells at its company-owned Nike Outlet stores (“Nike Outlets”).

2.

During the Class Period (defined below), Nike misrepresented the existence, nature, and amount of price discounts on products sold in Nike Outlet stores (collectively “Outlet Products”) by purporting to offer discounts off of a false “Suggested Retail Price,” which the Plaintiff

understood to be short for the commonly used retail phrase: Manufacturer’s Suggested Retail Price (“MSRP”).

3.

As used throughout this complaint, MSRP shall mean the highest price indicated on the price tag. As addressed in detail below, Plaintiff and reasonable consumers understand the MSRP to be the former, original, or regular price of the item on which it appears. The term “Outlet Products” expressly excludes products sold at Nike Outlets that advertised a MSRP that was a prevailing market retail price within the three months preceding.

4.

Specifically, Nike advertised—on the price tags of its Nike Outlet Products—MSRPs and then advertised, on the same price tags, a price termed “OUR PRICE,” which supposedly represented a steep discount off of the MSRP. The Outlet Product’s tags bearing the MSRP and false discounted price constitute advertisements under California law. Indeed, the coupling of the MSRP with the so-called discounted price makes a statement to the public as to the existence of a price discount and promotes the sale of Outlet Products on that basis.

5.

However, the MSRPs used by Nike did not convey accurate information about the products, and were instead a sham designed to mislead and deceive consumers. The MSRPs did not represent a bona fide price at which the Nike Outlet Products were previously sold. Nor was the advertised MSRP a prevailing market price within three months immediately preceding the publication of the advertised former prices, as required by California law.

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6.

Nike led consumers to believe that its MSRPs represented authentic price information about the products they purchased. In reality, Nike manufactures the Nike Outlet Products for *exclusive sale* at its Nike Outlets and always sells these goods for the advertised “OUR PRICE,” never the MSRP. Accordingly, such items were never sold, never suggested to be sold, or even intended to be sold—at the “MSRP” listed on its price tags. Nike Outlet Products are only sold for the lower “OUR PRICE.”

7.

Further, Nike intentionally uses the words “Suggested” and “Our” on its price tags to mislead consumers into believing that Nike – the manufacturer *and* the seller of the product – are somehow different and distinct from one another. When “Suggested” is used directly above the pronoun “Our,” it leads consumers to believe that a third party is *suggesting* that the items be sold at a certain price. Consumers understand “Our” to be Nike. Therefore, in this context they do not understand the suggesting party to also be Nike. Nike uses these carefully chosen words so that consumers will think that the party who sells the product (here, Nike) and “suggested” its price (still, Nike) are not the same, thereby duping customers into thinking they are getting a discount off the price a third party manufacturer determined it’s worth or the price at which it should be sold.

8.

The nomenclature and the MSRP’s listed on Nike Outlet Products are fictional creations designed by Nike to portray false price information, create an illusion that the manufacturer and the seller are not the same parties, enable phantom markdowns and increase sales.

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9.

Nike knows consumers are bargain-hunters, and knows consumers are excited by the prospect of a bargain. The juxtaposition of an artificial MSRP and an “OUR PRICE” on Nike Outlet Product price tags is intentionally designed to convey to consumers that the consumer is receiving a bargain or a “deal” on the product—on sales terms more preferential or more optimal to the consumer than those offered outside the context of the outlet store. But there is no bargain to be had. The MSRP on Nike Outlet Products exists only to create the illusion of a bargain and the words “Suggested” and “Our” are used only to deceive consumers into making purchases they otherwise would not have made because they perceive that Nike is offering a product for sale at a lower price than what the products’ manufacturer suggested it should be sold.

10.

In addition, the advertised MSRPs were *not* prevailing market retail prices within three months immediately preceding the publication of the advertised prices, as required by California law. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price advertisements,*” states:

For the purpose of this article the worth or value of anything advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

(emphasis added).

11.

The Federal Trade Commission (“FTC”) explicitly describes this fictitious pricing scheme employed at Nike Outlets as deceptive:

(a) Many members of the purchasing public believe that a manufacturer's list price, or *suggested retail price*, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

(b) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

12.

The Nike Outlet pricing scheme was prominently advertised on the price tags of all Nike Outlet Products in California. To illustrate, below is an example of the merchandise price tags that Plaintiff relied on:



13.

Upon information and belief, thousands of California consumers were victims of Nike's deceptive, misleading and unlawful false pricing scheme and thousands more, including Plaintiff, will be deceived if the practices continue.

14.

Nike fraudulently concealed from, and intentionally failed to disclose to, Plaintiff and others similarly situated, the truth about its MSRP's and advertised price discounts from those supposedly "suggested prices."

15.

Nike's false representations of MSRP's and false representations of savings, discounts and bargains are objectively material to a reasonable consumer.

16.

Plaintiff relied upon such false representations of MSRP's and discounts when purchasing apparel from a Nike Outlet in California. Plaintiff would not have made such purchase, or would not have paid the amount she did, but for Nike's false representations of the MSRP of the items they purchased, especially when juxtaposed with the supposedly discounted "OUR PRICE" at which Nike offered the items for sale.

17.

Plaintiff, in short, believed the truth of the price tags attached to the products she purchased at a Nike Outlet, which expressly told her that she as getting a terrific bargain on her purchases. In reality, she was not getting a bargain at all.

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18.

Through its false and deceptive marketing, advertising and pricing scheme, Nike violated (and continues to violate) California law. Specifically, Nike violated (and continues to violate) California's *Business & Professions Code* § 17200, *et seq.* (the "UCL"), California's *Business and Professions Code* § 17500, *et seq.* (the "FAL"), the California Consumers' Legal Remedies Act, *Civil Code* § 1750, *et seq.* (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" and specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1).

19.

Plaintiff, individually and on behalf of all others similarly situated, seeks restitution and other equitable remedies, including an injunction under the UCL, FAL and CLRA.

PARTIES

20.

Plaintiff, Monika Taylor, is an individual who is a citizen of the City of Orange, County of Orange, California. In reliance on Defendant's false and deceptive advertising, marketing and pricing schemes, Ms. Taylor purchased seven Nike Outlet Products from the Nike Outlet located in Orange, California on June 20, 2015, and as detailed herein, was damaged as a result thereof.

21.

Defendant Nike is a corporation duly organized and existing under the laws of the State of Oregon, with its principal place at One Bowerman Drive, Beaverton, OR 97005. Defendant operates 24 Nike Outlets in California.

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JURISDICTION AND VENUE

22.

This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the members of the putative Class exceed \$5 million, exclusive of costs, and at least one of the members of the proposed Class is a citizen of a different state than Nike.

23.

The District of Oregon has personal jurisdiction over Nike because Nike is a corporation or other business entity with its principal place of business in this District.

24.

Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Nike’s principal place of business is found within this District, and a substantial part of the events giving rise to Plaintiff’s claims arose here, including the creation of the scheme alleged in this Complaint.

FACTUAL ALLEGATIONS

25.

Traditionally, retail outlet stores were located in remote areas and typically maintained an inventory of defective and excess merchandise. Customers often flocked to these outlets in hopes of finding steep discounts and bargains. *See*

http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/ (last visited July 11, 2014).

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26.

However, in an effort to increase profits, major retailers such as Nike have, without notice to consumers, begun using company-owned “outlet” stores to sell made-for-outlet goods that are never intended to be sold at non-outlet stores.

27.

In California, such “outlet” stores are located in purpose-built malls touted as “outlets,” or “premium outlets.” For example, Plaintiff Taylor purchased her Nike Outlet Products at the premium outlets in Orange. The very term “outlet” conveys to reasonable consumers that at least some products are comprised of merchandise formerly offered for sale at full-price retail locations. The location of Nike Outlets in “outlet” malls deceives reasonable consumers into believing they are receiving true “outlet” merchandise, when they are not.

28.

Instead, retailers like Nike create the illusion of traditional outlet discounts and bargains by offering the made-for-outlet goods at prices reduced from fabricated, arbitrary, and false MSRP’s.

29.

Nike manufactures Nike Outlet Products exclusively for outlet stores. Indeed, sales associates at Nike Outlet routinely confirm that products are manufactured exclusively for outlet stores.

30.

Media reports indicates that outlet stores such as Nike Outlets are using false and fraudulent price comparison tactics. *See <http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now>* (last visited June 26, 2015).

31.

The intentional use of false and fraudulent price comparison tactics is increasingly deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress demanded an FTC investigation of misleading marketing practices by outlet stores across the United States. The four Members of Congress described a pricing scheme similar to the one implemented at Nike Outlets and stated, “[i]t is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).” *See <http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers>* (last visited June 26, 2015).

32.

This is precisely the practice used by Nike in its Nike Outlets.

Plaintiff’s Purchases

33.

On June 20, 2015, Plaintiff Taylor entered the Nike Outlet located in Orange, California. She observed that merchandise was advertised with price tags that represented an “MSRP” next to a significantly reduced “OUR PRICE.” She also observed that other items in the store did not make these price-reduction representations on their price tags. Ms. Taylor understood that the items with the “MSRP” tags represented that she was receiving a bargain or a “deal” on the product—on sales terms more preferential or more optimal to the consumer than those offered outside the context of the outlet store. Enticed by this prospect, Plaintiff was induced to

purchase one Jordan Jumpman High shirt bearing Style Number 883153882939, two Jordan Air Sneaker Socks bearing Style Numbers 884500205185 and 886059183419, one Air Jordan DriFit Crew bearing Style Number 883212934338, two Baseball Diamond Speed shirts bearing Style Numbers 887227821126 and 887227821065, and one Fly Elephant Pocket Tee bearing Style Number 885176081653.¹ Each of these items, and the other items she bought, advertised an MSRP and a lower OUR PRICE.

34.

But Nike never intended, nor did it ever, sell the items at the represented “MSRPs.” Thus, Plaintiff was deceived by the false price comparison into making a full retail purchase with no discount.

35.

Plaintiff Taylor would not have purchased the products, or would not have paid the prices she did, if she had known she was not truly receiving a bargain, or receiving a discount, as specified.

36.

Plaintiff’s and class members’ reliance on Defendant’s false price comparison advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to engage in this false and fraudulent behavior:

[c]omparative price advertising offers consumers a basis for comparing the relative value of the product offering by suggesting a monetary worth of the product and any potential savings...[A] comparative price advertisement can be construed as deceptive if it makes any representation,... or involves any practice that may materially mislead a reasonable consumer.

¹ Only a subset of Plaintiff’s purchases are highlighted above to demonstrate Nike’s deceptive marketing scheme. Plaintiff Taylor also made numerous other purchases of Nike Outlet Products during the Class Period, which include, but are not limited to, shirts, shoes, sweaters, socks, and pants. Plaintiff maintains these receipts and will make them available as litigation progresses.

Comparative Price Advertising: Informative or Deceptive?, Dhruv Grewal and Larry D.

Compeau, *Journal of Public Policy & Marketing*, Vol. 11, No. 1, at 52 (Spring 1992). In short:

[b]y creating an impression of savings, the presence of a higher reference price enhances subjects' perceived value and willingness to buy the product...Thus, if the reference price is not truthful, a consumer may be encouraged to purchase as a result of a false sense of value.

Id. at 55, 56.

37.

Despite the "MSRP/OUR PRICE" scheme used at Nike Outlets, Plaintiff would purchase Nike products in the future from Nike Outlet stores and/or other retail establishments, if product labels accurately reflect discounts and bargains. If the Court were to issue an injunction ordering Nike to comply with California's comparative price advertising laws, and prohibiting Nike's use of the deceptive practices discussed herein, Plaintiff would likely shop for Nike Outlet Products again in the near future at Nike Outlets.

CLASS ALLEGATIONS

38.

Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if set forth herein in full.

39.

Plaintiff brings this claim individually and as a Class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following subclass of persons located within the state of California (the "Class"):

All individuals in the State of California who, within the applicable statute of limitations preceding the filing of this action, purchased Nike Outlet Products from a Nike Outlet store in California.

Plaintiff reserves the right to redefine the Class or additional subclasses prior to certification.

40.

Excluded from the Class are Nike, its parents, subsidiaries, affiliates, officers and directors, any entity in which Nike has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges, including their staff, assigned to hear any aspect of this litigation, as well as their immediate family members.

41.

Plaintiff reserves the right to expand, limit, modify, or amend this class definition, including the addition of one or more subclasses, in connection with their motion for class certification, or any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

42.

The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members, the precise number which is within the knowledge of and can be ascertained only by resort to Nike's records.

43.

There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether, during the Class Period, Nike used false price representations and falsely advertised price discounts on its merchandise sold at Nike Outlets;

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- (b) Whether, during the Class Period, the MSRP's advertised by Nike were the prevailing market prices for the respective merchandise sold at Nike Outlets during the three month periods preceding the dissemination and/or publication of the advertised former prices;
- (c) Whether Nike's use of false or deceptive price advertising constituted false advertising under California Law;
- (d) Whether Nike engaged in unfair, unlawful and/or fraudulent business practices under California law;
- (e) Whether Nike misrepresented and/or failed to disclose material facts about its product pricing and discounts;
- (f) Whether Nike has made false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (g) Whether Nike's conduct, as alleged herein, was intentional and knowing;
- (h) Whether Class members are entitled to damages and/or restitution, and in what amount;
- (i) Whether Nike is likely to continue using false, misleading or illegal price comparisons such that an injunction is necessary; and
- (j) Whether Plaintiff and Class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of suit.

44.

Plaintiff's claims are typical of the claims of the members of the Class and, like all members of the Class, purchased goods from a Nike Outlet that falsely conveyed an "MSRP"

representation and a fictitious discount. Accordingly, Plaintiff has no interests antagonistic to the interests of any other member of the Class.

45.

Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained counsel who is experienced in prosecuting class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

46.

A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Nike's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

47.

The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Nike. For example, one court might enjoin Nike from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

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48.

The conduct of Nike is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic policies and practices of Nike make declaratory appropriate.

COUNT I
(Violation of the “Unfair” Prong of the UCL)

49.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-48 as if fully set forth herein.

50.

The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

51.

A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

52.

Nike has violated the “unfair” prong of the UCL by representing a false and misleading “MSRP” and corresponding “OUR PRICE” representation for goods exclusively manufactured for sale at Nike Outlets. As a result, the inflated “MSRP” and corresponding “OUR PRICE” was nothing more than a false, misleading and deceptive illusion of a discount.

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53.

These acts and practices are unfair because they caused Plaintiff, and are likely to cause consumers, to falsely believe that Nike Outlet is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly were or were intended to be sold at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Plaintiff, to buy such products, which they otherwise would not have purchased.

54.

The gravity of the harm to members of the Class resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives of Nike for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Nike engages in unfair business practices within the meaning of California Business & Professions Code § 17200, et seq.

55.

Through its unfair acts and practices, Nike has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Nike to restore this money to Plaintiff and all Class members, and to enjoin Nike from continuing to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the Classes may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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COUNT II
(Violation of the “Fraudulent” Prong of the UCL)

56.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-55 as if fully set forth herein.

57.

The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

58.

A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the consuming public.

59.

Nike’s labels and advertising materials concerning false and misleading MSRP’s were fraudulent within the meaning of the UCL because they deceived Plaintiff, and were likely to deceive members of the class, into believing that Nike was offering value, discounts or bargains at Nike Outlets from the prevailing market value or worth of the products sold that did not, in fact, exist.

60.

Nike deceived consumers into believing that it was offering value, discounts or bargains at Nike Outlets from the prevailing market value, real suggested price or worth of the products sold that did not, in fact, exist.

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61.

As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that were worth more than what they paid. This perception induced reasonable purchasers, including Plaintiff, to buy such products from Nike Outlets, which they otherwise would not have purchased.

62.

Nike's acts and practices as described herein have deceived Plaintiff and were highly likely to deceive members of the consuming public. Specifically, in deciding to purchase merchandise from a Nike Outlet store, Plaintiff relied on Nike's misleading and deceptive representations regarding its "MSRP" and "OUR PRICE" price tags. Each of these factors played a substantial role in Plaintiff's decision to purchase those products, and Plaintiff would not have purchased those items in the absence of Nike's misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct result of Nike's pricing practices described herein.

63.

As a result of the conduct described above, Nike has been unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically, Nike has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

64.

Through its unfair acts and practices, Nike has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Nike to restore this money to Plaintiff and all Class members, and to enjoin Nike from continuing to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the

Classes may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT III
(Violation of the “Unlawful” Prong of the UCL)

65.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-64 as if fully set forth herein.

66.

The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

67.

A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

68.

California statutory and regulatory law also expressly prohibits false former pricing schemes. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price advertisements,*” states:

For the purpose of this article the worth or value of anything advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement. [Emphasis added.]

Id.

69.

Civil Code § 1770, subsection (a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

70.

Nike also violated and continues to violate *Business & Professions Code* § 17501, and *Civil Code* § 1770, sections (a)(9) and (a)(13) by advertising false discounts from purported former prices that were, in fact, not the prevailing market prices within three months next preceding the publication and dissemination of advertisements containing the false former prices.

71.

Further, the FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The FTC has established Guidelines which prohibit false pricing schemes, similar to Nike’s MSRP/OUR PRICE Scheme in material respects, as deceptive practices that would violate the FTCA:

(a) Many members of the purchasing public believe that a manufacturer’s list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

(b) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

72.

Nike's use of and reference to a materially false "MSRP" in connection with its marketing and advertisements concerning the merchandise sold at Nike Outlets violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

73.

As a result of the conduct described above, Nike has been unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically, Nike has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

74.

Through its unlawful acts and practices, Nike has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Nike to restore this money to Plaintiff and all Class members, and to enjoin Nike from continuing to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the Classes may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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COUNT IV
**(Violation of the California False Advertising Law,
California Business & Professions Code Section 17500, *et seq.*)**

75.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-74 as if fully set forth herein.

76.

California's *Business and Professions Code* § 17500, *et seq.* prohibits unfair, deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to worth, value and former price.

77.

Nike's practice of advertising "MSRP's" on exclusive, made-for-Nike Outlets merchandise, which were materially greater than the actual prices of those products was an unfair, deceptive and misleading advertising practice because it gave the false impression that the products sold at Nike Outlets were worth more than they actually were. In fact, the exclusive, made-for-Nike Outlet merchandise did not sell for a price anywhere close to the "MSRP" advertised because the merchandise was always sold for, or discounted further from, the OUR PRICE representation on the price tag when placed on sale at the Nike Outlets.

78.

Through its unfair acts and practices, Nike has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Nike to restore this money to Plaintiff and all Class members, and to enjoin Nike from continuing to violate the FAL as discussed herein and/or from violating the FAL in the future. Otherwise, Plaintiff and the Classes may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT V
**(Violation of the Consumers Legal Remedies Act,
California Civil Code Section 1750, et seq.: Injunctive Relief)**

79.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-78 as if fully set forth herein.

80.

This cause of action is brought pursuant to the CLRA.

81.

Plaintiff and each member of the proposed class are “consumers” within the meaning of California Civil Code § 1761(d).

82.

Nike’s selling of goods manufactured exclusively for sale at Nike Outlets to Plaintiff and the Class were “transactions” within the meaning of California *Civil Code* § 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning of California Civil Code §1761(a).

83.

As described herein, Nike violated the CLRA by falsely representing the nature, existence and amount of price discounts by fabricating inflated “MSRP’s” on price tags. Such a pricing scheme is in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”).

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///

84.

Plaintiff relied on Nike's false representations in deciding to purchase goods at a Nike Outlet. Plaintiff would not have purchased such items absent Nike's unlawful conduct.

85.

Plaintiff requests this Court enjoin Nike from continuing to violate the CLRA as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff, the Classes and members of the general public may be irreparably harmed and/or denied effective and complete remedy if such an order is not granted.

86.

This Court is the proper place for trial of this action under the CLRA because Nike's principal place of business is in Oregon, and as further set forth in the Venue Declaration of Monika Taylor, which is attached as Exhibit 1.

COUNT VI
(Unjust Enrichment)

87.

Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-86 as if fully set forth herein.

88.

Plaintiff brings this claim individually, as well as on behalf of members of the Classes, under California law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating

the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which Class members will be drawn, California law applies to the claims of the Classes.

89.

In the alternative, Plaintiff brings this claim individually as well as on behalf of the California Class.

90.

At all times relevant hereto, Defendant deceptively priced, marketed, advertised, and sold Nike Outlet Products to Plaintiff and the Classes.

91.

Plaintiff and members of the Classes conferred upon Defendant non-gratuitous payments for merchandise that they would not have if not for Defendant's deceptive pricing, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Classes, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiff and members of the Classes were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers would have expected.

92.

Defendant has been unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiff and members of the Classes, which retention under these circumstances is unjust and inequitable because Defendant misrepresented, among other things, that its merchandise was being offered at a significant discount, which caused injuries to Plaintiff and

members of the Classes because they paid for, and/or paid a price premium due to the misleading pricing and advertising.

93.

Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff and members of the Classes under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to Plaintiff and members of the Classes for unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant Nike as follows:

- A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;
- B. Pursuant to Plaintiff's first four causes of action, a judgment awarding Plaintiff and all members of the Class restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;
- C. An order enjoining Defendant from continuing to violate the UCL, False Advertising Law and CLRA as described herein;
- D. A judgment awarding Plaintiff her costs of suit; including reasonable attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil Procedure § 1021.5 and as otherwise permitted by statute; and pre and post-judgment interest;

- E. Excluding the fifth cause of action, an order awarding Plaintiff and the proposed Class members damages;
- F. Excluding the fifth cause of action, an order awarding restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of its unlawful, unfair and fraudulent business practices described herein; and
- G. Such other and further relief as may be deemed necessary or appropriate.

JURY TRIAL DEMANDED

PLAINTIFF demands a jury trial on all triable issues.

DATED this 18th day of April, 2016.

MARKOWITZ HERBOLD PC

By: */s/ J. Matthew Donohue*

J. Matthew Donohue, OSB NO. 067542
Shannon Armstrong, OSB No. 060113
(503) 295-3085

KOPELOWITZ OSTROW P.A.
Jeffrey M. Ostrow, Florida Bar No. 121452
Scott A. Edelsberg, Florida Bar No. 0100537
(*pro hac vice* to be applied for)
(*pro hac vice* to be applied for)
(954) 525-4100

TYCKO & ZAVAREEI LLP
Hassan A. Zavareei, California Bar No. 181547
Jeffrey D. Kaliel, California Bar No. 238293
(*pro hac vice* to be applied for)
(202) 973-0900

LAW OFFICES OF WAYNE S. KREGER, PA
Wayne S. Kreger, California Bar No. 154759
(*pro hac vice* to be applied for)
(310) 917-1083

Attorneys for Plaintiff

EXHIBIT 1

VENUE DECLARATION OF MONIKA TAYLOR

I, MONIKA TAYLOR, declare as follows:

1. I am the plaintiff in the above-entitled action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to the following facts under oath.

2. I am, and have at all times relevant to this action been, a resident of Orange in Orange County. Defendant Nike's principal place of business is in Washington County, Oregon, and this Court, having subject matter jurisdiction of this action, is the proper court for the trial of this action.

3. On June 20, 2015, I entered the Nike Outlet located at T20 City Blvd. W., Space 617, Orange, California 92868. I observed that merchandise was advertised with price tags that represented an "MSRP" next to a significantly reduced "OUR PRICE." I also observed that other items in the store did not make these price-reduction representations on their price tags. I understood that the items with the "MSRP" tags represented that I was receiving a bargain or a "deal" on the product—on sales terms more preferential or more optimal to the consumer than those offered outside the context of the outlet store. Enticed by this prospect, I was induced to purchase one Jordan Jumpman High shirt bearing Style Number 883153882939, two Jordan Air Sneaker Socks bearing Style Numbers 884500205185 and 886059183419, one Air Jordan DriFit Crew bearing Style Number 883212934338, two Baseball Diamond Speed shirts bearing Style Numbers 887227821126 and 887227821065, and one Fly Elephant Pocket Tee bearing Style Number 885176081653.¹ Each of these items, and the other items I bought, advertised an MSRP and a lower OUR PRICE. These purchases are the subject of my CLRA action against Nike.

¹ Only a subset of my purchases are highlighted above to demonstrate Nike's deceptive marketing scheme. I also made numerous other purchases of Nike Outlet Products during the

I declare, under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of APRIL, 2016, in ORANGE,
California.



MONIKA TAYLOR

Class Period, which include, but are not limited to, shirts, shoes, sweaters, socks, and pants. I maintain these receipts and will make them available as litigation progresses.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Monika Taylor, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Orange Co., California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
 J. Matthew Donohue, MARKOWITZ HERBOLD, PC
 1211 SW Fifth Avenue, Suite 3000
 Portland, OR 907204; (503) 295-3085

DEFENDANTS
 NIKE, INC.

County of Residence of First Listed Defendant Washington Co., Oregon
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question *(U.S. Government Not a Party)*

4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 USC Sec. 1332

Brief description of cause:
Unfair or Deceptive Trade Practices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ over \$5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 04/18/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ J. Matthew Donohue

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

MONIKA TAYLOR, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

NIKE, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) NIKE, INC.
Registered Agent: National Registered Agents, Inc.
38 State Street, Suite 420
Salem, OR 97301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: