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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

KELLY CAHILL, et al., individually and on  
behalf of others similarly situated,  
Plaintiffs,

vs.

NIKE, INC., an Oregon Corporation,  
Defendant.

Case No. 3:18-cv-01477-JR

**PLAINTIFFS' EXPERT DR. DAVID  
NEUMARK'S OBJECTIONS AND  
RESPONSES TO DEFENDANT'S  
NOTICE OF DEPOSITION AND  
REQUEST FOR PRODUCTION**

PROPOUNDING PARTY: Defendant Nike, Inc.

RESPONDING PARTY: Dr. David Neumark

SET NO.: One

**TO: NIKE AND TO ITS ATTORNEY OF RECORD:**

Plaintiffs' expert Dr. David Neumark ("Expert") hereby answers, objects, and otherwise responds to the first set of Request for Production of Documents, served on him by Defendant Nike, Inc. ("Defendant" or "Nike"). These responses reflect Expert Plaintiff's present knowledge and understanding of the matters covered by Defendant's requests and the Expert's reasonable best efforts to date to locate the documents responsive to them, if any. Expert reserves all rights to amend or supplement these responses and any responsive answers as may be necessary or appropriate in the future. Expert will not re-produce any responsive documents that have already been produced by the Expert. Expert also agrees to meet and confer with Defendant in an attempt to resolve Defendant's disagreements, if any, with these responses.

Expert objects to Nike's demand to produce the documents "by mail or overnight delivery service" because Nike and Expert have been electronically producing documents.

**GENERAL OBJECTIONS AND CONDITIONS**

Expert makes the following general responses and objections, which apply to each and every specific request and are incorporated by reference in each and every response below as if set forth fully therein.

1. These responses and the documents produced are solely for the purpose of this action, and not for the purpose of any other action, including any other action pending between some or all of the parties.

2. The fact Expert has produced any given document should not be taken as an admission that Expert accepts or admits the existence of any facts or that such documents constitute admissible evidence.

3. Expert's production to date reflects a reasonable search of his records given the time in which Nike demanded compliance.

4. The Parties have agreed to and the Court has entered a Joint Stipulation and Order Regarding E-Discovery, through which the Parties will develop protocols for searching and producing electronically stored information ("ESI") in this matter. Given that Nike has not made any meet and confer efforts to develop and agree upon search terms pursuant to that Stipulation, Expert's production reflects his best efforts to find relevant material in his e-mail account(s).

5. The Court has entered a Protective Order, which governs the use of Confidential and "Attorney Eyes Only" designations. Expert will mark documents pursuant to that Protective Order where appropriate.

6. In addition to any specific objections which may be made on an individual basis in the separate responses set forth below, Expert objects generally to each request to the extent that it seeks documents subject to and protected by the attorney work-product doctrine, the attorney-client privilege, Rule 26, Expert's privacy rights and the privacy rights of third parties without a compelling need for the requested documents, or any other applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction that protects such documents from involuntary disclosure. Any inadvertent production of these documents is not intended to constitute, and shall not constitute, a waiver in whole or in part of any privilege, doctrine, or objection. Nothing contained herein is intended to be or should be construed as a waiver of any privilege, doctrine, or objection.

7. Expert objects to each request to the extent that it seeks the production of documents that are not proportional to the subject matter of this action.

8. Any statement made herein of an intent to produce documents is not, and shall not be deemed, an admission of any factual or legal contention contained in any request.

9. Expert objects to each request to the extent that it purports to impose obligations on Expert in excess of or different from those imposed by the Federal Rules of Civil Procedure, the Local Rules, or other applicable laws or rules.

10. Expert objects to each request to the extent that it seeks information for an unreasonable and/or unlimited period of time and/or does not include reasonable or appropriate date restrictions.

11. Expert objects to each request to the extent it seeks documents that are (a) publicly available to Defendant and Defendant's counsel; (b) already in Defendant's possession, custody, or control; (c) in Expert's possession only because produced by another party in this litigation; or (d) not within Expert's possession, custody, or control. In responding to the requests, Expert will produce only documents currently within his possession, custody, or control.

12. Expert objects to each request and instruction to the extent that it contains terms which are undefined, vague and ambiguous. Expert objects to each request to the extent it is overly broad, burdensome, oppressive, vague, or generally non-specific to fail to provide notice of what is needed for a full and complete response.

13. Expert objects to Defendant's definition of the words "document" and "documents" to the extent that Defendant's definition of those terms is functionally different than the definition of the term "documents" set forth in Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure.

14. Expert objects to Defendant's definition of "NIKE" or "DEFENDANT" because the inclusion of "any past or present officers, employees and/or agents of said named entity and/or all divisions, subsidiaries, parent, affiliated, related or predecessor companies, or any of them" is overbroad, vague, and ambiguous to the extent the definition includes unidentified individuals whom Expert does not know and encompasses persons or entities not acting within the scope of their relationships with Defendant or who are not relevant to the subject matter of this litigation.

15. By producing the documents herein, Expert is not giving his permission that the documents produced may be used for any purpose, other than for use in this litigation pursuant to

the Protective Order agreed to by the Parties and other applicable agreements to be entered into by and between the Parties to this action.

Subject to and without waiving the foregoing objections, and incorporating them by reference into each of the responses provided below, Expert responds to Defendant's Request for Production of Documents, as follows:

**RESPONSES TO REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:**

All documents, including studies, charts, memoranda, reports or analyses, prepared by you or any person(s) acting under your direction and/or control, that constitute, support, or relate to your opinions as set forth in any Expert Report you are submitting or intend to submit in connection with the *Cahill Litigation*, including any forthcoming rebuttal Expert Reports.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a "party deponent." Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires "reasonable" notice, and Rule 34 requires a minimum of 30 days' notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike's possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert, including Requests 2-5. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in "concise language."

Plaintiffs object to this Request because Nike’s definition of “document” is not proportional, unduly burdensome, overbroad, vague, and ambiguous. For example, it includes “Every form of computer or electronically generated material,” which also violates the Joint Stipulation and Order Regarding E-Discovery (ECF No. 72).

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court’s scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike’s experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert has nothing further to produce because the original and supplemental reports were produced, which contain or cite the documents within the scope of Rule 26.

**REQUEST FOR PRODUCTION NO. 2:**

Copies of all documents which you relied upon, reviewed, or otherwise considered in:

- a. preparing the Expert Report;
- b. reaching the opinions expressed in the Expert Report; and/or
- c. conducting the analyses or research described in the Expert Report.

To the extent that any such materials are unmodified copies of documents that have already been produced in discovery by Plaintiffs or Defendants and are not already listed in Appendix A to your Expert Report, you may simply identify those documents by their corresponding Bates numbers.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome.

This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert, including Requests 1 and 3-5. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object to this Request because Nike’s definition of “document” is not proportional, unduly burdensome, overbroad, vague, and ambiguous. For example, it includes “Every form of computer or electronically generated material,” which also violates the Joint Stipulation and Order Regarding E-Discovery (ECF No. 72). The definition “Defendant” is also not proportional, unduly burdensome, overbroad, vague, and ambiguous because it includes all past officers, employees, and agents of not only Nike but also every division, subsidiary, affiliated, or related company.

Plaintiffs object that the Request seeks work product, attorney-client communications, and documents protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court's scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike's experts have served their reports and other deadlines ordered by the Court.

This Request seeks discovery that exceeds the categories of discovery listed in Rule 26(b)(2) or Rule 26(b)(4)(C). For example, Nike not only requests documents "considered" but also documents "reviewed" regardless of relied upon or considered.

Plaintiffs object that the Request seeks documents that are attorney-client communications, work product, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs' attorneys and the expert witness.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce all non-privileged documents that he considered or relied upon in forming his expert opinions that are not already in Nike's possession or otherwise equally accessible to it. The documents produced in this litigation that were considered or relied upon by Expert in forming his expert opinions are cited in the reports, listed in Appendix A with corresponding bates numbers or are reflected in meet and confer letters from Nike regarding facts and data - all of which are already in Nike's possession. Other non-litigation documents listed in the report and/or Appendices are publicly available or already in Nike's possession (i.e., Lundquist report). Any not yet published documents expressly cited and relied upon in Expert's report will be produced.

**REQUEST FOR PRODUCTION NO. 3:**

All documents that constitute or reflect any observations, assumptions, opinions or analyses you relied upon and/or performed in connection with your Expert Report in the *Cahill Litigation*, including any forthcoming rebuttal Expert Reports.



### **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert, including Requests 1-2 and 4-5. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object to this Request because Nike’s definition of “document” is not proportional, unduly burdensome, overbroad, vague, and ambiguous. For example, it includes “Every form of computer or electronically generated material,” which also violates the Joint Stipulation and Order Regarding E-Discovery (ECF No. 72).

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court’s scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike’s experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce any non-privileged documents that set forth assumptions or opinions or analyses upon which he relied upon in his Expert Report that Nike does not already have in its possession or are not equally accessible to Nike.

**REQUEST FOR PRODUCTION NO. 4:**

All facts, data, or other information or documentation (including but not limited to, publications, articles, papers, analyses, interview notes and research reports) relied on, referred to, or considered by you in forming any of the opinions in connection with your Expert Report in the *Cahill Litigation*, including any forthcoming rebuttal Expert Reports.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert, including Requests 1-3 and 5. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft

reports and communications between Plaintiffs' attorneys and the expert witness.

This Request violates the Court's scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike's experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce all non-privileged documents that he considered or relied upon in forming his expert opinions that are not already in Nike's possession or otherwise equally accessible to it. The documents produced in this litigation that were considered or relied upon by Expert in forming his expert opinions are cited in the reports, listed in Appendix A with corresponding bates numbers or are reflected in meet and confer letters from Nike regarding facts and data - all of which are already in Nike's possession. Other non-litigation documents listed in the report and/or Appendices are publicly available or already in Nike's possession (i.e., Lundquist report). Any not yet published documents expressly cited and relied upon in Expert's report will be produced.

**REQUEST FOR PRODUCTION NO. 5:**

Copies of any research, including internet research, that you conducted, or that was conducted on your behalf, in arriving at the opinions you reached in connection with the *Cahill Litigation*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a "party deponent." Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule

30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert, including Requests 1-4. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

Plaintiffs object to this Request because the undefined terms “research” and “internet research” are vague and ambiguous.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert is unaware of any non-privileged responsive documents to this Request based on his understanding of this Request.

**REQUEST FOR PRODUCTION NO. 6:**

Copies of all communications, whether written, electronic, or otherwise recorded, between you and any other experts retained by Plaintiffs’ counsel in the *Cahill Litigation*. Such other experts include, but are not limited to, Dr. Kathleen Lundquist.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on

August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert is unaware of any non-privileged communications that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 7:**

Copies of all materials provided to or received from any other experts retained by Plaintiffs’ counsel in the *Cahill Litigation*. Such other experts include, but are not limited to, Dr. Kathleen Lundquist. Such materials include, but are not limited to, any drafts of Dr. Lundquist’s report titled “Expert Report of Dr. Kathleen K. Lundquist in *Cahill, et al. v. Nike, Inc.*” dated July 15, 2021, and any forthcoming rebuttal reports from Dr. Lundquist in the *Cahill Litigation*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena

duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court’s scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike’s experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Nike already has all non-privileged responsive documents in its possession, namely Dr. Lundquist’s report dated July 15, 2021.

**REQUEST FOR PRODUCTION NO. 8:**

Copies of all communications, whether written, electronic, or otherwise recorded, between you and Plaintiffs, Plaintiffs’ counsel or anyone acting on their behalf which relate to or discuss: (1) your compensation in connection with any work being performed in the *Cahill Litigation*; (2) any facts or data provided to you that you considered in forming the opinions expressed in any Expert Report in the *Cahill Litigation*; or (3) any assumptions provided to you

that you relied upon in forming the opinions expressed in any Expert Report in the *Cahill* *Litigation*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.” This Request is not proportional, unduly burdensome, and violate Rule 26 because they not only exceed the categories of discovery listed in Rule 26(b)(2) or Rule 26(b)(4)(C) but also seek discovery expressly protected by Rule 26.

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court’s scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike’s experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce not privileged, responsive communications concerning compensation in connection with the expert report, identification of facts or data received and considered in forming opinions in the report, and the identification of assumptions provided and relied upon in forming opinions in the report.

**REQUEST FOR PRODUCTION NO. 9:**

A copy of the retention/retainer agreement between you and Plaintiffs or Plaintiffs' counsel for your participation in the *Cahill* Litigation.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a "party deponent." Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires "reasonable" notice, and Rule 34 requires a minimum of 30 days' notice. Nike has no justification for serving this Request one week before demanding production.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce a copy of fully executed retention agreements.

**REQUEST FOR PRODUCTION NO. 10:**

All documents reflecting your compensation rates in the *Cahill Litigation*, including all time records, time sheets, and/or billing/invoice records for the work you have performed in connection with the *Cahill Litigation*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome.



This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession and because it seeks documents far beyond invoices that have limited or no relevance to this action. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object to this Request because Nike’s definition of “document” is not proportional, unduly burdensome, overbroad, vague, and ambiguous. For example, it includes “Every form of computer or electronically generated material,” which also violates the Joint Stipulation and Order Regarding E-Discovery (ECF No. 72).

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce invoice records and related communications exchanged regarding expert work performed in this case.

**REQUEST FOR PRODUCTION NO. 11:**

All written directions you have given to others in this matter.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness. *See* Fed. R. Civ. P. 26, 2010 Cmts. (“Protected ‘communications’ include those between the party's attorney and assistants of the expert witness.”).

This Request violates the Court’s scheduling Orders because it seeks documents concerning a rebuttal expert report before Nike’s experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert does not have non-privileged documents to produce.

**REQUEST FOR PRODUCTION NO. 12:**

All articles, speeches, presentations, books and other publications authored in whole or in part by you that relate to any aspect of your purported expertise that is being relied upon in the *Cahill Litigation*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because Nike has had the list of such documents for five weeks, the documents are publicly available, and Nike served this Request for all these documents to be produced within one week. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert will produce any not yet published documents expressly cited and relied upon in Expert’s report.

**REQUEST FOR PRODUCTION NO. 13:**

All data or other information considered by you that played any role in formulating the opinions expressed in any Expert Report offered in the *Cahill Litigation*, including any

forthcoming rebuttal Expert Reports.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Plaintiffs object to this Request as not proportional, overbroad, and unduly burdensome. This Request violates Federal Rules of Civil Procedure 30, 34, and 45. Nike served this Request pursuant to Rule 34, but Expert is not a “party deponent.” Rule 30(b)(2) requires a subpoena duces tecum if the noticed person is not a party deponent. Nike served this Request after 5pm on August 19, 2021 and Nike demands that the production be made by August 27, 2021, but Rule 30 requires “reasonable” notice, and Rule 34 requires a minimum of 30 days’ notice. Nike has no justification for serving this Request one week before demanding production.

This Request is also not proportional, overbroad, and unduly burdensome because it seeks documents in Nike’s possession. This Request is duplicative of numerous other Requests Nike served for documents from Expert. This Request has no limitation as to time. This Request violates Local Rule 34-1(c). Because the Request is repetitive and overlapping with other Requests it is not made in “concise language.”

This Request violates Rule 26, is overbroad, not proportional, and unduly burdensome, because “other information” was removed from Rule 26 in 2010. *See e.g.*, Fed. R. Civ. P. 26, 2010 Cmts. (“The amendments to Rule 26(a)(2) require disclosure regarding expected expert testimony of those expert witnesses not required to provide expert reports and limit the expert report to facts or data (rather than ‘data or other information,’ as in the current rule) considered by the witness.”).

Plaintiffs object that the Request seeks documents that are work product, attorney-client communications, and/or documents that are protected under Rule 26(b)(4), including draft reports and communications between Plaintiffs’ attorneys and the expert witness.

This Request violates the Court’s scheduling Orders because it seeks documents

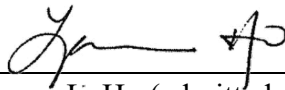
concerning a rebuttal expert report before Nike's experts have served their reports and other deadlines ordered by the Court.

Notwithstanding these objections, and expressly reserving the same, Plaintiff responds as follows: Expert has no non-privileged documents to produce regarding data he considered in forming the opinions in his Expert Reports because all such non-privileged data are either already in Nike's possession or otherwise equally available to it.

Dated: August 30, 2021

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO



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application forthcoming)  
James Kan (*pro hac vice* application forthcoming)  
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