

**Laura Salerno Owens, OSB #076230**  
LauraSalerno@MarkowitzHerbold.com  
**David B. Markowitz, OSB #742046**  
DavidMarkowitz@MarkowitzHerbold.com  
**Harry B. Wilson, OSB #077214**  
HarryWilson@MarkowitzHerbold.com  
**Anna M. Joyce, OSB #013112**  
AnnaJoyce@MarkowitzHerbold.com  
**Kathryn P. Roberts, OSB #064854**  
KathrynRoberts@MarkowitzHerbold.com  
MARKOWITZ HERBOLD PC  
1455 SW Broadway, Suite 1900  
Portland, OR 97201  
Telephone: (503) 295-3085 | Fax: (503) 323-9105

**Laura L. Ho** (admitted *pro hac vice*)  
lho@gbdhlegal.com  
**Barry Goldstein, Of Counsel** (admitted *pro hac vice*)  
bgoldstein@gbdhlegal.com  
**James Kan** (admitted *pro hac vice*)  
jkan@gbdhlegal.com  
**Byron Goldstein** (admitted *pro hac vice*)  
brgoldstein@gbdhlegal.com  
**Katharine L. Fisher** (admitted *pro hac vice*)  
kfisher@gbdhlegal.com  
**Mengfei Sun** (admitted *pro hac vice*)  
msun@gbdhlegal.com  
GOLDSTEIN, BORGAN, DARDARIAN & HO  
155 Grand Avenue, Suite 900  
Oakland, CA 94612  
Telephone: (510) 763-9800 | Fax: (510) 835-1417

Attorneys for Plaintiffs, Opt-In Plaintiffs, and Putative Class  
[Additional Counsel of Record listed on the Signature page]

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

**CLASS ACTION ALLEGATIONS**  
[Fed. R. Civ. P. 23]

**PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

**Title VII of the Civil Rights Act of 1964; Oregon  
Equal Pay Act; Oregon Equality Act**

**FILED WITH REDACTIONS  
ORAL ARGUMENT REQUESTED**

**TABLE OF CONTENTS**

	<b>Page</b>
LR 7-1(A) CERTIFICATION .....	1
MOTION.....	1
MEMORANDUM OF LAW .....	1
I. INTRODUCTION .....	1
II. SUMMARY OF PLAINTIFFS’ CLASS CLAIMS.....	4
III. PROCEDURAL HISTORY.....	7
IV. STATEMENT OF FACTS .....	8
A. Nike’s Job Architecture Organizes All WHQ Positions Consistently and Defines Comparable Work. ....	8
1. Nike Uses Its Uniform Job Architecture’s Type and Level of Work to Organize All Covered Positions. ....	8
2. Nike Consistently Defines Comparable Work Based on Jobs Sharing the Same Type and Level of Work.....	10
B. Two Components of Nike’s Compensation Policies and Practices Adversely Impact Women’s Compensation. ....	12
1. Nike’s Classwide Policy for Setting Starting Salaries, Which Included Consideration of Prior Pay, Disadvantaged Women. ....	12
2. Nike’s Classwide Practices for Awarding Annual Merit Increases and Bonuses Perpetuated Gender Disparities Because They Are Based on a Percentage of Current Salary.....	15
a. Nike Calculates Annual Merit Pay Increases as Percentage of Base Pay. ....	15
b. Nike Calculates Annual Bonus Awards as a Percentage of Base Pay.....	17
c. These Poor Practices Exacerbate Existing Gender Differences in Pay.....	18
3. Nike Pays Women Less than Men for Performing Comparable Work, Which Is Driven by Lower Starting Pay and Exacerbated by Merit Increases and Annual Bonuses.....	19

C.	Nike’s Fill Strategy Policy or Practice for Determining Whether to Fill Promotions Non-Competitively or Competitively Adversely Impacts Women.....	22
1.	Nike’s Fill Strategy Determines Whether to Promote Employees Either Non-Competitively or Competitively .....	22
2.	Nike Promotes Women Less Often Than Men Because it Overwhelmingly Chose to Fill Positions Through its Non-Competitive Practice.....	24
D.	Nike’s Initial Job Assignment Policies or Practices Adversely Impact Women.....	26
E.	Women Raised Serious Gender Discrimination Complaints, Including the 2018 Starfish Survey, But HR Has Been Ineffective in Addressing Discrimination.....	28
1.	The Starfish Survey Raises Systemic Complaints of Gender Discrimination at Nike.....	28
2.	Nike’s Inadequate Responses to Discrimination, Including HR’s Admitted Failures.....	31
F.	The Representative Plaintiffs Suffered Under the Same Nike Policies or Practices.....	33
V.	ARGUMENT .....	34
A.	Plaintiffs Meet the Rule 23 Standards for Class Certification.....	34
B.	The Rule 23(a)(1) Numerosity Requirement Is Met.....	35
C.	The Rule 23(a)(2) Commonality Requirement Is Met Because the Determination of Common Questions Will Resolve Issues Central to the Claims.....	35
1.	Plaintiffs’ Disparate Impact Claims Are Capable of Classwide Resolution.....	36
a.	Plaintiffs’ <i>Prima Facie</i> Case that Nike’ Classwide Starting Pay Policy and Practice Caused a Disparate Impact on Women Is Capable of Classwide Resolution.....	38
b.	Plaintiffs’ <i>Prima Facie</i> Case that Nike’s Classwide Annual Merit Increase and Annual Bonus Policies and Practices Caused a Disparate Impact on Women Is Capable of Classwide Resolution.....	40

c.	Plaintiffs’ <i>Prima Facie</i> Case that Nike’s Classwide Practice of Implementing Its Fill Strategy to Fill Positions Non-competitively Caused a Disparate Impact on Women Is Capable of Classwide Resolution. ....	43
d.	Plaintiffs’ <i>Prima Facie</i> Case that Nike’s Classwide Practice of Hiring Caused a Disparate Impact on Women Is Capable of Classwide Resolution. ....	45
e.	Classwide Evidence Will Show Nike Cannot Meet Its Burden of Showing the Challenged Practices Are Job Related and Consistent with Business Necessity.....	46
2.	Plaintiffs’ Disparate Treatment Claims Are Capable of Classwide Resolution. ....	48
3.	Plaintiffs’ Oregon Equal Pay Act Claim Are Capable of Classwide Resolution. ....	50
D.	The Rule 23(a)(3) Typicality Requirement Is Met Because Plaintiffs’ and the Class Claims Are Based on the Same Classwide Policies or Practices. ....	51
E.	The Rule 23(a)(4) Adequacy Requirement is Met.....	52
F.	Plaintiffs Meet the Requirements of Rule 23(b)(2) and 23(b)(3). ....	54
1.	Plaintiffs’ Injunctive and Declaratory Relief Claims Based on Sex Discrimination Are Well Suited for Rule 23(b)(2) Certification.....	54
2.	Plaintiffs Satisfy Rule 23(b)(3)’s Requirements of Predominance and Superiority.....	55
a.	Common Issues Predominate for Disparate Impact Claims .....	56
b.	Common Issues Predominate for Disparate Treatment Claims. ....	57
c.	Commons Issues Predominate for Oregon EPA Claims.....	58
d.	A Class Trial Is Manageable With a Bifurcated Trial Proceeding.....	58
e.	Superiority of Class Action Procedure .....	58
VI.	CONCLUSION.....	59

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Abdullah v. U.S. Sec. Assocs., Inc.</i> , 731 F.3d 952 (9th Cir. 2013) .....	59
<i>Albemarle Paper Co. v. Moody</i> , 422 U.S. 405 (1975).....	55
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	54, 55
<i>Ass’n of Mexican-Am. Educators v. California</i> , 231 F.3d 572 (9th Cir. 2000) .....	46
<i>In re AutoZone, Inc., Wage &amp; Hour Emp. Pract. Litig.</i> , 289 F.R.D. 526 (N.D. Cal. 2012).....	53
<i>Bazemore v. Friday</i> , 478 U.S. 385 (1986).....	19
<i>Bouman v. Block</i> , 940 F.2d 1211 (9th Cir. 1991) .....	47
<i>Buchanan v. Tata Consulting Servs. Ltd.</i> , No. 4:15-cv-01696-YGR, 2017 WL 6611653 (N.D. Cal. Dec. 27, 2017).....	5
<i>Butler v. Home Depot, Inc.</i> , No. 3:94-cv-04335-SI, 1997 WL 605754 (N.D. Cal. Aug. 29, 1997) .....	5
<i>Campbell v. City of Los Angeles</i> , 903 F.3d 1090 (9th Cir. 2018) .....	8
<i>Chen-Oster v. Goldman, Sachs, &amp; Co.</i> , 325 F.R.D. 55 (S.D.N.Y. 2018) .....	<i>passim</i>
<i>Contreras v. City of Los Angeles</i> , 656 F.2d 1267 (9th Cir. 1981) .....	20
<i>Dawson v. Entek Int’l</i> , 630 F.3d 928 (9th Cir. 2011) .....	4
<i>E.E.O.C. v. Farmer Bros. Co.</i> , 31 F.3d 891 (9th Cir. 1994) .....	5

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.