

Chelsea P. Pyasetsky, OSB No. 136450

Chelsea@thenelllawgroup.com

Emerson Lenon, OSB No. 123728

Emerson@thenelllawgroup.com

Thenell Law Group, P.C.

12909 SW 68th Parkway, Suite 290

Portland, Oregon 97223

Telephone: (503) 372-6450

Facsimile: (503) 372-6496

Scott J. Street (*pro hac vice* forthcoming)

ssreet@jwhowardattorneys.com

JW Howard/Attorneys, Ltd.

201 South Lake Avenue, Suite 303

Pasadena, CA 91101

Telephone: (213) 205-2800

*Attorneys for Plaintiffs Doug Kerkering, Hannah Thibodo
and Wanda Rozwadowska*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

DOUG KERKERING, HANNAH THIBODO,
and WANDA ROZWADOWSKA,

Plaintiffs,

vs.

NIKE, INC.,

Defendant.

Case No.

COMPLAINT FOR DAMAGES

(Title VII of the Civil Right Act)

Damages at least \$75,000 or an amount to be
proven at trial

JURY TRIAL REQUESTED

Plaintiffs Doug Kerkering, Hannah Thibodo and Wanda Rozwadowska (“Plaintiffs”) alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Mr. Kerkering is an individual who resides in Klamath Falls, Oregon.
2. Ms. Thibodo is an individual who resides in Harrison, Tennessee.
3. Ms. Rozwadowska is an individual who resides in Hailey, Idaho.
4. Defendant NIKE, Inc., is a corporation organized under Delaware law and which has its principal place of business in Beaverton, Oregon.
5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1332.
6. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) as NIKE resides in this judicial district and because the facts that gave rise to the Complaint occurred here.

FACTUAL ALLEGATIONS

7. Plaintiffs used to work for NIKE. They worked at its corporate headquarters in Beaverton. Mr. Kerkering spent 31 years working there. Ms. Thibodo spent 7 years working there. Ms. Rozwadowska spent 12 years working there.

8. Until the COVID-19 pandemic hit, Plaintiffs were valued employees. They served in senior roles at NIKE. They earned six-figure salaries. They had no record of discipline. Then they got caught up in the political battle over COVID-19 vaccination.

9. By the middle of 2021, it had become clear that the COVID-19 vaccines developed by Pfizer, Moderna and Johnson & Johnson did not do what most had hoped: they did not prevent people from being infected with, or spreading, COVID-19. Thus, unlike the polio or smallpox vaccines, they could not eliminate COVID-19 from the face of the Earth. They could not end the pandemic. Many scientists recognized this and wrote about it publicly. Even the federal government acknowledged it.

10. The most the COVID-19 vaccines can do is protect a person from severe illness or death. Even that benefit is disputed and, if it exists at all, wanes over time.

11. Nonetheless, many politicians, including the president, encouraged companies to

require their employers get the COVID-19 vaccines to keep their jobs. The president even demanded that a federal agency, OSHA, mandate that large companies like NIKE require their employees to get the COVID-19 vaccines to keep their jobs.

12. To that end, on October 9, 2021, NIKE decided that all its employees would have to get the COVID-19 vaccines, or they would be fired. The policy was unprecedented. NIKE has never required that individuals get a vaccine to work for it. It never even inquired about such private medical information before the COVID-19 pandemic, recognizing that state and federal laws prohibit employers from conditioning employment on medical conformity.

13. On information and belief, NIKE also believes in an individual's right to bodily autonomy, the freedom to choose what one does with his or her body.

14. Nonetheless, NIKE disregarded these rights and enforced its mandatory vaccine policy aggressively. It did that even after the United States Supreme Court struck down OSHA's vaccine mandate for large employers. It denied most requests for religious and medical accommodations. And it has fired numerous employees, including Plaintiffs, for failing to comply with the policy.

15. These actions were unlawful. NIKE does not have the power to make COVID-19 vaccination a requirement for every job. Having an injection inside one's body has no bearing on the tasks performed by the plaintiffs. And since the COVID-19 vaccines do not prevent infection or transmission, something NIKE has acknowledged, it cannot plausibly claim that unvaccinated employees pose a direct threat to their co-workers.

16. NIKE's actions show that it views un-vaccinated employees as having inferior immune systems. They did not protect themselves as well as their vaccinated colleagues and thus may get sicker if they get infected with the COVID-19 virus. That is a perceived disability protected against discrimination in the workplace.

17. Plaintiffs complied with generally applicable rules related to COVID-19. They would have continued to do those things, whether testing or wearing a mask in certain settings. Instead, they got caught up in NIKE's political posturing. They lost their jobs, their careers, and had to start over.

They bring this action to hold NIKE accountable for its actions.

18. Vaccination should not be a political issue. There is no need for everybody to get the vaccine, especially since, as NIKE admitted, the vaccines do not prevent infection. Furthermore, Plaintiffs have a right to privacy and a right to bodily autonomy, the right to choose what they do with their bodies. Lawsuits decided a hundred years ago cannot eliminate that right. They cannot undo the progress that Americans have made in recognizing medical freedom during the past 50 years.

19. NIKE has historically been overly protective of these rights. It went to great lengths to accommodate people's religious beliefs and medical conditions, developing reams of policies and procedures to guarantee their protection. It ignored them all this time.

20. Plaintiffs received right to sue letters from the Equal Employment Opportunity Commission ("EEOC") and thus exhausted their administrative remedies.

FIRST CLAIM FOR RELIEF

Violation of Title VII of Civil Rights Act (Perceived Disability) by Kerkering and Thibodo

21. Plaintiffs incorporate paragraphs 1 through 20 of this Complaint as though set forth fully herein.

22. Title VII of the Civil Rights Act of 1964, combined with the Americans with Disability Act ("ADA") prohibits discrimination in the workplace based on an actual or perceived disability. The EEOC has interpreted these rules to include protection for an actual or perceived immunological condition.

23. Plaintiffs Kerkering and Thibodo worked for NIKE. They have a perceived physical disability (not having the best protection against COVID-19 in their bodies) that conflicted with a stated job requirement (NIKE's mandatory vaccination policy). NIKE was aware of this conflict but did not explore any available reasonable alternatives for accommodating Plaintiffs and it refused to consider the accommodations they proposed (remote work, testing, etc.), none of which would have imposed a substantial burden on NIKE.

24. NIKE fired Plaintiffs Kerkering and Thibodo due to their perceived physical disability.

25. As a result of NIKE's actions, Plaintiffs Kerkering and Thibodo each suffered damages in an amount to be proven at trial and which exceed \$75,000. These actions were the actual and proximate cause of those damages.

26. NIKE acted with malice or reckless indifference to Plaintiffs' rights, justifying an award of punitive damages.

27. Plaintiffs should also recover their costs and legal fees.

SECOND CLAIM FOR RELIEF

Violation of Title VII of Civil Rights Act (Failure to Accommodate) by Rozwadowska

28. Plaintiffs incorporate paragraphs 1 through 20 of this Complaint as though set forth fully herein.

29. Title VII of the Civil Rights Act of 1964 forbids an employer from firing someone because of a conflict between the person's religious belief or observance and an employment requirement.

30. Ms. Rozwadowska worked for NIKE. She had sincerely held religious beliefs or practices that conflicted with a stated job requirement (mandatory COVID vaccination). NIKE was aware of this conflict but did not explore any available reasonable alternatives for accommodating Ms. Rozwadowska's beliefs and it refused to consider the accommodations she proposed, none of which would have imposed a substantial burden on NIKE.

31. As a result of NIKE's actions, Ms. Rozwadowska suffered damages in an amount to be proven at trial and which exceeds \$75,000. These actions were the actual and proximate cause of those damages.

32. NIKE acted with malice or reckless indifference to Ms. Rozwadowska's rights, justifying an award of punitive damages.

33. Ms. Rozwadowska should also recover her costs and legal fees.

\\ \

\\ \

THIRD CLAIM FOR RELIEF

Battery by Rozwadowska

34. Plaintiffs incorporate paragraphs 1 through 20 of this Complaint as though set forth fully herein.

35. NIKE, acting through its corporate agents, coerced Ms. Rozwadowska to inject herself with the COVID-19 vaccine, against her will. That is a serious or offensive matter. In doing so, NIKE acted voluntarily and with the intent of causing this serious or offensive touching.

36. NIKE's actions constituted an offensive touching under Oregon law as they exceeded the bounds of reasonable taste, especially given that NIKE—in fact, no Oregon company—has never ordered its employees to get a vaccine they do not want before and has never conditioned an employee's job on getting a vaccine.

37. As a result of NIKE's actions, Ms. Rozwadowska suffered personal injury, including extensive adverse reactions to the COVID-19 vaccine which caused her to be unable to work and to eventually leave NIKE, all of which were foreseeable to NIKE. She has suffered damages in an amount to be proven at trial, but which exceed \$75,000. NIKE's actions were the actual and proximate cause of those damages.

38. NIKE acted with malice or reckless indifference to Ms. Rozwadowska's rights, justifying an award of punitive damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant NIKE as follows:

1. Plaintiff Kerkering prays for a judgment that NIKE violated Title VII of the Civil Rights Act by discriminating against Plaintiff Kerkering on the basis of an actual or perceived disability:
 - a. Economic and noneconomic damages in an amount to be determined at trial, but in any case, not less than \$75,000;
 - b. Punitive damages to be determined at trial; and
 - c. Reasonable attorney fees and costs incurred herein.

2. Plaintiff Thibodo prays for a judgment that NIKE violated Title VII of the Civil Rights Act by discriminating against Plaintiff Thibodo on the basis of an actual or perceived disability:
 - a. Economic and noneconomic damages in an amount to be determined at trial, but in any case, not less than \$75,000;
 - b. Punitive damages to be determined at trial; and
 - c. Reasonable attorney fees and costs incurred herein.
3. Plaintiff Rozwadowska prays for a judgment that NIKE exposed her to unwanted and offensive physical touching, thereby battering her:
 - a. Economic and noneconomic damages in an amount to be determined at trial, but in any case, not less than \$75,000;
 - b. Punitive damages to be determined at trial; and
 - c. Reasonable attorney fees and costs incurred herein.
4. Plaintiff Rozwadowska prays for a judgment that NIKE violated Title VII of the Civil Rights Act by discriminating against Plaintiff Rozwadowska by failing to accommodate Plaintiff Rozwadowska's sincerely held religious beliefs:
 - a. Economic and noneconomic damages in an amount to be determined at trial, but in any case, not less than \$75,000;
 - b. Punitive damages to be determined at trial; and
 - c. Reasonable attorney fees and costs incurred herein.

DATED this 15th day of November 2022

THENELL LAW GROUP, P.C.

By: /s/Emerson Lenon
Chelsea P. Pyasetsky, OSB No. 136450
E-mail: chelsea@thenelllawgroup.com
Emerson Lenon, OSB No. 123728
E-mail: emerson@thenelllawgroup.com
Telephone: (503) 372-6450

Scott J. Street (*pro hac vice* forthcoming)
JW Howard/Attorneys, Ltd.
201 South Lake Avenue, Suite 303
Pasadena, CA 91101
E-mail: ssstreet@jwhowardattorneys.com
Telephone: (213) 205-2800

Attorneys for Plaintiffs