

Per A. Ramfjord, OSB No. 934024

per.ramfjord@stoel.com

Kennon Scott, OSB No. 144280

kennon.scott@stoel.com

STOEL RIVES LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

Telephone: (503) 224-3380

Facsimile: (503) 220-2480

Attorneys for Plaintiff Nike, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NIKE USA, INC., an Oregon corporation,

Case No. 3:16-cv-00743-SB

Plaintiff,

DECLARATION OF BEN CESAR

v.

BORIS BERIAN, an individual California
resident,

Defendant.

I, Ben Cesar, hereby declare as follows:

1. I am currently North America Track and Field Athlete Manager for Nike, Inc. Nike, Inc.'s global sports marketing organization is responsible for seeking, building and establishing formal relationships with sports federations, professional sports leagues and elite professional athletes worldwide, primarily through negotiating endorsement and licensing agreements with professional athletes and sports properties. I submit this declaration in support of Nike USA, Inc.'s ("Nike") Motion for Temporary Restraining Order and Order to Show

Cause Why Preliminary Injunction Should Not Issue. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. Nike is the world's leading innovator in athletic footwear, apparel and equipment. Nike's success has been built in part by forming endorsement relationships with high-profile athletes across the sporting spectrum.

3. I have worked for Nike, Inc. since September 2010. In my current role, I am involved with all aspects of Nike's sports marketing, including the management of relationships with Nike's top track and field athlete, team, league and federation partners.

The 2015 Contract

4. Boris Berian is a highly successful runner, having finished fourth in the Monaco Diamond League 800 meter event with the fifth-fastest American mark of all time. He also recently won first place in the 800 meter event at the IAAF World Indoor Championships in Portland, Oregon in March and the Prefontaine Classic in Eugene, Oregon in May.

5. As part of Nike's endorsement program, Nike entered into a Track & Field Contract with Mr. Berian on June 17, 2015 (the "2015 Contract"). A redacted true and correct copy of the 2015 Contract is attached hereto as Exhibit 1. The 2015 Contract had a nearly seven-month term, ending on December 31, 2015, and it gave Nike the exclusive right to Mr. Berian's endorsement of athletic footwear and apparel throughout the term.

6. The 2015 Contract also included the following right of first refusal provision:

During the Contract Period and for a 180-day period thereafter, NIKE shall have a right of first refusal with regard to any bona fide third-party offer received by ATHLETE and which ATHLETE desires to accept. ATHLETE shall submit in writing to NIKE (on the third-party's letterhead) the specific terms of any such offer. NIKE shall have ten (10) business days from the date of its receipt

of such third-party offer to notify ATHLETE in writing if it will enter into a new contract with ATHLETE on terms no less favorable to ATHLETE than the material, measurable and matchable terms of such third-party offer.

The New Balance Offer and the 2016 Contract

7. On January 19, 2016, Mr. Berian's agent, Merhawi Keflezighi, emailed me and John Capriotti, Nike, Inc. Global Director of Athletics, an exclusive endorsement offer received by Mr. Berian from New Balance (the "New Balance Offer"). In his email, Mr. Keflezighi noted that Mr. Berian found the offer "agreeable." That same day, Nike responded asking Mr. Keflezighi to resend the offer on official New Balance letterhead, as required by Section 5 of the 2015 Contract. Mr. Keflezighi did so the next day. Redacted true and correct copies of these emails are attached hereto as Exhibit 2 and Exhibit 3.

8. Three days later, on January 22, 2016, Mr. Capriotti sent a letter to Mr. Keflezighi unequivocally stating that "NIKE matches the New Balance Offer." A true and correct copy of this letter is attached hereto as Exhibit 4. Nike's letter specifically matched the seven terms in the attachment Mr. Keflezighi had provided, which consisted of a term sheet, providing for (i) a base fee, (ii) travel allowance, (iii) merchandise allotment, (iv) performance bonuses, (v) track time bonuses, (vi) rollover increases to the base fee and (vii) allowing Mr. Berian to compete under the affiliation of his track club. Notably, the New Balance term sheet was not a full written agreement and was silent on a variety of terms that are standard in track and field endorsement contracts, including reductions, which provide for a reduction of an athlete's compensation if the athlete fails to perform his or her obligations under the contract or perform consistent with expectations. To date, Mr. Berian has never provided Nike with any evidence suggesting that the full contractual terms proposed by New Balance did not include such industry-standard reductions.

9. On February 15, 2016, I followed up by sending Mr. Keflezighi a written agreement to memorialize the terms of Mr. Berian's new agreement with Nike. It included the seven terms from the New Balance Offer and other standard contractual terms, including industry-standard reductions. After receiving the written agreement, Mr. Keflezighi emailed Nike stating that Mr. Berian "has expressed an interest not to resume a relationship with Nike." A true and correct copy of this email exchange is attached hereto as Exhibit 5.

10. Thereafter, on February 19, 2016, Nike sent a letter to Mr. Berian, stating that, as of January 22, 2016, Mr. Berian was bound by his new agreement with Nike (the "2016 Contract"). A true and correct copy of this letter is attached hereto as Exhibit 6.

11. In addition, on April 12, 2016, Nike wired Mr. Berian payment for all amounts due to Mr. Berian under the 2016 Contract. After the wire was returned, Nike resent the money on May 3, 2016. Just this afternoon, Nike learned that Mr. Berian had attempted to return this second wire. Nike has also provided Mr. Berian with access to an online store for ordering Nike product as permitted for product allowance under the 2016 Contract.

Mr. Berian's Failure to Abide by His Contracts with Nike

12. Despite his new agreement with Nike, Mr. Berian has been competing in New Balance footwear and apparel. Mr. Berian wore New Balance footwear and apparel while competing at the following events: (1) January 29, 2016 House of Track event in Portland, Oregon, (2) February 14, 2016 New Balance Indoor Games in Boston, Massachusetts, (3) March 11 and 12, 2016 USATF Indoor Track & Field Championships in Portland, Oregon, (4) April 30, 2016 Drake Relays in Des Moines, Iowa and (5) May 28, 2016 Prefontaine Classic in Eugene, Oregon. True and correct copies of images of Mr. Berian competing in New Balance footwear and/or apparel during the term of the 2016 Contract are attached hereto as Exhibit 7.

13. Mr. Berian has publicly declared that he is “unrepresented” and has not publicly entered into an endorsement agreement with New Balance. However, it appears that New Balance recently began sponsoring Mr. Berian’s track club, Big Bear Track Club, as evidenced by the New Balance logo appearing on all of the club’s apparel. And Mr. Berian has been promoting New Balance via his social media accounts. For example, several of his Tweets and Instagram posts from March, April and May feature New Balance apparel and/or footwear and the hashtags “nbrunning,” “NBRunning,” and/or “TeamNB.” True and correct copies of some of these social media posts are attached hereto as Exhibit 8.

14. Mr. Berian’s failure to abide by his contractual endorsement obligations to Nike is of particular concern because two of the most important events in the track and field world are approaching in the coming months. In July, he is set to compete at the U.S. Olympic Team Trials in Eugene, Oregon. And if successful there, he will likely compete at the 2016 Olympics in Rio de Janeiro, Brazil in August. The Olympics and Olympic Trials are held once every four years. Mr. Berian’s participation and potential for success in such events make his endorsement a unique marketing and promotional opportunity.

Nike’s Efforts to Resolve Its Dispute with Mr. Berian

15. Despite Mr. Berian’s failure to perform his contractual obligations, Nike has worked to resolve this dispute with Mr. Berian ever since it arose in early 2016.

16. Despite these considerations, Nike is enthusiastic about continuing to work with Mr. Berian in the future, and it remains hopeful this matter can be concluded quickly and efficiently, and without substantial disruption to Mr. Berian’s training.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2016.

A handwritten signature in black ink, appearing to read "Ben Cesar", written over a horizontal line.

Ben Cesar
North America Track & Field Athlete Manager
Nike, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF BEN CESAR** on the following named persons on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery
- email
- notice of electronic filing using the CM/ECF system

to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

Mr. Vincent C. Ewing
Alvarez-Glasman & Colvin
Suite 400 - West Tower
13181 Crossroads Parkway North
City of Industry, CA 91746
Email: VEwing@agclawfirm.com

DATED: June 1, 2016.

STOEL RIVES LLP

/s/ Per A. Ramfjord

PER A. RAMFJORD, OSB No. 934024
per.ramfjord@stoel.com
KENNON SCOTT, OSB No. 144280
kennon.scott@stoel.com

TRACK & FIELD CONTRACT

THIS IS A CONTRACT made and entered into by and between **BORIS BERIAN** ("ATHLETE") and **NIKE USA, Inc.** ("NIKE"), located at One Bowerman Drive, Beaverton, Oregon 97005, with regard to the endorsement of NIKE Products and the NIKE brand. The parties agree as follows:

1. **TERM.** The "Contract Period" shall be from **June 17, 2015 to December 31, 2015.**
2. **GRANT OF ENDORSEMENT RIGHTS.** REDACTED
D
3. **USE/SUPPLY OF NIKE PRODUCT.** ATHLETE shall wear and/or use exclusively "NIKE Products" (i.e., Products bearing NIKE Identification) while participating in all athletic or athletic-related activities, including but not limited to all track & field/road racing competitions and/or meets and related press conferences; training, practices, exhibition games and skills competitions; sports-related camps or clinics, meetings, interviews, autograph sessions and promotional appearances, whether or not on behalf of NIKE; and all other occasions during which ATHLETE wears Products or poses for track & field/road racing photographs.
REDACTED
4. **APPEARANCES.** REDACTED
5. **RIGHT OF FIRST DEALING & REFUSAL.** Until sixty (60) days prior to the expiration of this Contract, ATHLETE shall not engage in negotiations with any third-party regarding ATHLETE's endorsement of Products of such third-party. During the Contract Period and for a 180-day period thereafter, NIKE shall have a right of first refusal with regard to any bona fide third-party offer received by ATHLETE and which ATHLETE desires to accept. ATHLETE shall submit in writing to NIKE (on the third-party's letterhead) the specific terms of any such offer. NIKE shall have ten (10) business days from the date of its receipt of such third-party offer to notify ATHLETE in writing if it will enter into a new contract with ATHLETE on terms no less favorable to ATHLETE than the material, measurable and matchable terms of such third-party offer.
6. **COMPENSATION.** NIKE shall compensate ATHLETE as set forth in the attached Compensation Schedule.
7. **REPRESENTATIONS, WARRANTIES, COVENANTS.** REDACTED
8. **RIGHT TO EXTEND, REDUCE, AND PRORATE BASE COMPENSATION.**
 - (a) If for any reason ATHLETE fails to compete in IAAF-sanctioned competition for a period of one hundred twenty (120) days or more (the "Suspension Period"), then NIKE shall have the right, in its sole discretion, to withhold payment(s) of all or any portion of Base Compensation (as set forth in the attached Compensation Schedule) to be paid during the Suspension Period and/or require reimbursement of all or any portion of Base Compensation paid during the Suspension Period (such reimbursement to be made to NIKE within thirty (30) days of notice to ATHLETE). In addition, NIKE may elect, upon written notice to ATHLETE at least sixty (60) days prior to the expiration of the Contract Period, to extend the Contract Period by the amount of time equal to the Suspension Period (the "Extension Term"). If NIKE so elects, then during the Extension Term, NIKE shall pay ATHLETE the Base Compensation, if any, withheld and/or reimbursed with respect to the Suspension Period (subject to any reductions applicable during such Suspension Period). Further, without prejudice to any other right NIKE may have hereunder, if for any reason ATHLETE fails to compete in IAAF-sanctioned competition for one hundred eighty (180) days or more, then NIKE shall have the option to terminate this Contract pursuant to Paragraph 9 below. In addition to the foregoing, NIKE may, in its sole discretion, reduce ATHLETE's Base Compensation as set forth in the attached Compensation Schedule.

(b) In the event NIKE exercises any right of proration/reduction under this Contract: (i) such proration/reduction shall be effective as of the date of the next regularly scheduled payment, unless otherwise indicated; (ii) such proration/reduction shall remain in effect for the remainder of the Contract Period, unless otherwise indicated; and (iii) NIKE shall have the right to either withhold payment(s) of Base Compensation or require reimbursement of Base Compensation, if any, paid in excess of the amount to which ATHLETE would be entitled after such proration/reduction (such reimbursement to be made to NIKE within thirty (30) days of notice to ATHLETE). All rights of proration and reduction under this Contract shall be cumulative and may be applied irrespective of other reductions or prorations already made for that Contract Year.

9. RIGHTS OF TERMINATION.

REDACTED

10. OWNERSHIP OF NIKE MARKS, ETC.

REDACTED

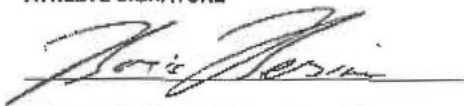
11. GOVERNING LAW; JURISDICTION. This Contract shall be governed by and construed in accordance with the laws of Oregon and any suit or action arising hereunder shall be filed in a Court of competent jurisdiction within Oregon. The parties hereby consent to personal jurisdiction within Oregon and to service of process by registered or certified mail addressed to the respective party as set forth below. In the event ATHLETE breaches any material term of this Contract, in addition to any and all other remedies available at law or in equity, NIKE shall be entitled to injunctive relief from further violation of this Contract, during any litigation as well as on final determination thereof, without prejudice to any other right of NIKE hereunder or otherwise.

12. MISCELLANEOUS.

REDACTED

IN WITNESS WHEREOF, this Contract has been fully-executed as of the date indicated below.

ATHLETE SIGNATURE


Address: 9836 Main Street
Rancho Cucamonga, CA 91730

NIKE USA, Inc.


John Capriotti,
VP, Global/NA Sports Marketing - Athletics

Date: 7.1.15

COMPENSATION SCHEDULE

BASE COMPENSATION: NIKE shall pay ATHLETE annual Base Compensation as indicated below in the amount set opposite the indicated Contract Year (subject to Paragraph 8 and any withholding obligations required by law) in equal quarterly installments due on the first day of each calendar quarter, except that the first installment shall be due within (30) days of full execution of this contract.

1st Contract Year (2015) REDACTED

ANNUAL MERCHANDISE CREDIT: REDACTED

TRAVEL/PHYSIO CREDIT: REDACTED

PERFORMANCE BONUSES

REDACTED

REDACTED

From: Cesar, Ben <Ben.Cesar@nike.com>
Sent: Tuesday, January 19, 2016 10:44 AM
To: Rinfret, Leah
Subject: FW: Boris Berian
Attachments: Boris Berian Offer-3.pdf

REDACTED

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: Tuesday, January 19, 2016 10:24 AM
To: Ben Cesar <Ben.Cesar@nike.com>, John Capriotti <john.capriotti@nike.com>
Subject: Boris Berian

Hello Ben & Cap,
I hope all is well with you.

I am now representing Boris Berian. New Balance has submitted an offer for Boris, which Boris finds agreeable. Pursuant to Section 5 of Boris' Nike agreement, I am submitting the New Balance offer to you. In addition to the financial terms and the lack of reductions, we do consider the affiliation clause in the contract a material element of the offer.

Please let me know if you have any questions or want to discuss over the phone.

Thanks,

--

Hawi Keflezighi
(310) 895-6438
www.HAWImanagement.com

**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
2017	\$125,000
2018	\$125,000

II. TRAVEL:

2016	\$5,000
2017	\$5,000
2018	\$5,000

III. MERCHANDISE ALLOTMENT

Yearly	\$5,000
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IV. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
- B. If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall pay ATHLETE a performance bonus as set opposite such achievement set forth below.

With respect to all world and United States (American) records achieved, the following criteria shall apply to earn such bonuses: (i) all records/performances must be officially recognized by the USATF and/or IAAF, whichever is applicable; (ii) records must be broken; performances that equal a current record will not qualify for a bonus; and (iii) record bonuses are not cumulative and ATHLETE shall receive the single highest bonus achieved one time per Contract Year per distance.

With respect to ranking bonuses, the following criteria shall apply to earn such bonuses: (1) all rankings are determined by Track and Field News; (2) rankings are only applicable for Olympic events; and (3) ranking bonuses are not cumulative and ATHLETE shall receive the single highest ranking bonus achieved one time per Contract Year.

(i) WORLD RECORDS:

- Individual World Outdoor Record (Olympic events only): \$100,000
- Individual World Indoor Record (Olympic events only): \$25,000

(ii) U.S. (AMERICAN) RECORDS:

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000

(iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

Event	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000
World Indoor Championships	\$10,000	\$7,500	\$5,000
U.S. Olympic Trials (Track)	\$7,500	\$5,000	\$3,000
U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500
IAAF Continental Cup	\$5,000	\$3,000	\$1,000
NB Grand Prix	\$3,000		

(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$25,000
2	\$15,000
3	\$10,000
4	\$5,000
5	\$4,000
6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$10,000
2	\$5,000
3	\$2,500

V. TRACK TIME BONUSES (must be electronically timed and non-wind aided)

Bonus	800m
\$15,000	Sub 1:43.34
\$20,000	Sub 1:43.00

Time bonuses are non-cumulative and paid only one time per year per event to the highest bonus level achieved

VI. ROLLOVER (Individual Events Only):

If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall increase ATHLETE's Base Fee by such amount listed opposite such competition or achievement, as applicable, for each subsequent Contract Year through the expiration of the Agreement Period. Rollover increases to the Base Fee are not cumulative, and ATHLETE shall receive only the single highest Rollover increase to Base Fee achieved one time per Contract Year.

Criteria	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000

- World Outdoor Records (Individual Olympic Events Only): \$100,000
- U.S. (American) Outdoor Records (Individual Olympic Events Only): \$50,000
- World Indoor Record (Individual Olympic events only): \$25,000
- (vii) If ATHLETE Qualifies for the final at the 2016 Olympics or 2017 World Championships, base Compensation will increase by \$10,000 (One time per Contract Term)
- Value of Top 5 world ranking

VII. AFFILIATION:

New Balance shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team New Balance and wear the Team New Balance official uniform in all international events.

From: Cesar, Ben <Ben.Cesar@nike.com>
Sent: Wednesday, January 20, 2016 1:37 PM
To: Rinfret, Leah
Subject: Fwd: Boris Berian
Attachments: BBerian Offer.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

REDACTED

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: 1/20/2016 1:28 PM (GMT-08:00)
To: "Cesar, Ben" <Ben.Cesar@nike.com>
Subject: Re: Boris Berian

Hello Ben,
I have attached the offer in the requested format.

Thanks,
Hawi

On Tue, Jan 19, 2016 at 6:53 PM, Cesar, Ben <Ben.Cesar@nike.com> wrote:
Hello Merhawi.

Please resend the offer on official company letterhead.
Thank you.

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: Tuesday, January 19, 2016 10:24 AM
To: Ben Cesar <Ben.Cesar@nike.com>, John Capriotti <john.capriotti@nike.com>
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Please let me know if you have any questions or want to discuss over the phone.

Thanks,

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Hawi Keflezighi

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www.HAWImanagement.com

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NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

**BORIS BERIAN OFFER
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2016	\$125,000
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- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000



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100 GUEST STREET
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newbalance.com

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\$15,000	Sub 1:43.34
\$20,000	Sub 1:43.00

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100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

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- Value of Top 5 world ranking

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New Balance shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team New Balance and wear the Team New Balance official uniform in all international events.



January 22, 2016

Via Email

Mr. Merhawi Keflezighi (hawisports@gmail.com)

Director

HAWI Management

RE: Track & Field Contract effective July 1, 2015 between NIKE USA, Inc. ("NIKE") and Boris Berian (the "Contract")

Dear Merhawi,

On January 20, 2016, in accordance with Paragraph 5 of the Contract, you provided NIKE with the attached offer from New Balance for Boris Berian (the "New Balance Offer"). This letter is to notify you that NIKE matches the New Balance Offer as set forth in Attachment 2 and will enter into a new contract with Boris for the exclusive right and license for his "Athlete Endorsement" in connection with the "Products" and/or NIKE brands (as each is defined in the Contract) and otherwise in accordance with the matched terms set forth in Attachment 2.

Notwithstanding your email, because the New Balance Offer is silent on reductions and NIKE is only obligated to match the terms stated in the New Balance Offer, we will send to you a new contract which will include the stated terms of the New Balance Offer as received. However, if material terms were omitted from the New Balance Offer, such as the purposeful exclusion of reductions, please provide to us for review a revised offer from New Balance that reflects that and all other material terms.

Additionally, as NIKE has informed you of its match of the New Balance Offer, you should notify New Balance that Boris is no longer free to negotiate or enter into a contract with them.

NIKE is delighted that Boris will remain part of the NIKE family.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "John Capriotti", is written over the typed name. The signature is fluid and cursive.

John Capriotti

cc: Boris Berian
Ben Cesar, NIKE
Leah Rinfret, NIKE



NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
2017	\$125,000
2018	\$125,000

II. TRAVEL:

2016	\$5,000
2017	\$5,000
2018	\$5,000

III. MERCHANDISE ALLOTMENT

Yearly	\$5,000
--------	---------

IV. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
- B. If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall pay ATHLETE a performance bonus as set opposite such achievement set forth below.

With respect to all world and United States (American) records achieved, the following criteria shall apply to earn such bonuses: (i) all records/performances must be officially recognized by the USATF and/or IAAF, whichever is applicable; (ii) records must be broken; performances that equal a current record will not qualify for a bonus; and (iii) record bonuses are not cumulative and ATHLETE shall receive the single highest bonus achieved one time per Contract Year per distance.

With respect to ranking bonuses, the following criteria shall apply to earn such bonuses: (1) all rankings are determined by Track and Field News; (2) rankings are only applicable for Olympic events; and (3) ranking bonuses are not cumulative and ATHLETE shall receive the single highest ranking bonus achieved one time per Contract Year.

(i) WORLD RECORDS:

- Individual World Outdoor Record (Olympic events only): \$100,000
- Individual World Indoor Record (Olympic events only): \$25,000

(ii) U.S. (AMERICAN) RECORDS:

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000



NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

(iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

Event	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000
World Indoor Championships	\$10,000	\$7,500	\$5,000
U.S. Olympic Trials (Track)	\$7,500	\$5,000	\$3,000
U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500
IAAF Continental Cup	\$5,000	\$3,000	\$1,000
NB Grand Prix	\$3,000		

(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$25,000
2	\$15,000
3	\$10,000
4	\$5,000
5	\$4,000
6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$10,000
2	\$5,000
3	\$2,500

V. TRACK TIME BONUSES (must be electronically timed and non-wind aided)

Bonus	800m
\$15,000	Sub 1:43.34
\$20,000	Sub 1:43.00

Time bonuses are non-cumulative and paid only one time per year per event to the highest bonus level achieved



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VI. ROLLOVER (Individual Events Only):

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Criteria	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000

- World Outdoor Records (Individual Olympic Events Only): \$100,000
- U.S. (American) Outdoor Records (Individual Olympic Events Only): \$50,000
- World Indoor Record (Individual Olympic events only): \$25,000
- (vii) If ATHLETE Qualifies for the final at the 2016 Olympics or 2017 World Championships, base Compensation will increase by \$10,000 (One time per Contract Term)
- Value of Top 5 world ranking

VII. AFFILIATION:

New Balance shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team New Balance and wear the Team New Balance official uniform in all international events.

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From: Cesar, Ben <Ben.Cesar@nike.com>
Sent: Monday, February 15, 2016 3:39 PM
To: Rinfret, Leah
Subject: FW: Contract - B. Berian

Follow Up Flag: Follow up
Flag Status: Flagged

REDACTED

On 2/15/16 3:36 PM, "hawisports@gmail.com" <hawisports@gmail.com> wrote:

>Hello Ben,

>As discussed, Boris has expressed an interest not to resume a
>relationship with Nike. You asked us to discuss internally and notify
>you. Boris' position has not changed since our conference call.

>

>Additionally, your original letter asked for a revised proposal/ offer.

>We reserved the right to submit the requested information if you decide
>not to honor Boris' personal preference.

>

>If you decide not to honor Boris' personal preference, I can have a
>revised offer to you in the next week.

>

>Thanks,

>Hawi

>

>Sent from my iPhone

>

>> On Feb 15, 2016, at 3:23 PM, Cesar, Ben <Ben.Cesar@nike.com> wrote:

>>

>> Hello Merhawi.

>>

>> Attached is the long form contract for Boris for your review.

>> As we discussed on our last call, we're looking forward to continuing
>>our relationship with Boris.

>> <Berian, Boris, Agmt, 2016-18 (v 2.15)[6].pdf>



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

February 19, 2016

PER A. RAMFJORD
Direct (503) 294-9257
per.ramfjord@stoel.com

VIA EMAIL AND U.S. MAIL

Boris Berian
9836 Main Street
Rancho Cucamonga, CA 97130
Berian800@yahoo.com

Re: Track & Field Contract between Nike USA, Inc. ("NIKE") and Boris Berian

Dear Mr. Berian:

We represent NIKE and are writing with regard to your Track & Field Contract with NIKE (the "Contract"). Specifically, we are writing to inform you that NIKE intends to enforce its contractual right of first refusal to require you to enter a new agreement with NIKE and will take any necessary legal action to enjoin you from entering an agreement with New Balance.

As you know, Paragraph 5 of your Contract provides that "NIKE shall have a right of first refusal with regard to any bona fide third party offer." Pursuant to that provision, on January 20, 2016, your agent, Merhawi Keflezighi, provided NIKE with a written offer you had received from New Balance. In response, on January 22, 2016, John Capriotti of NIKE responded saying that it would match "the New Balance offer" as set forth in the written terms you provided. Based on this series of events, you are now obligated to enter a new agreement with NIKE under the terms set forth in the New Balance offer.

Should you refuse to enter a new agreement with NIKE, we will have no choice but to seek an injunction to prevent you from entering a contract with New Balance. Courts routinely grant such injunctions and we fully expect that such an injunction would be granted in this case.

We also want to make clear that NIKE is not required to and will not consider matching any additional or alternative offers from New Balance. We understand that Mr. Keflezighi has suggested that Mr. Capriotti somehow invited you to present a "revised offer" from New Balance. That is not the case. In his January 22, 2016 letter, Mr. Capriotti noted that the written terms of the New Balance offer were silent with respect to the type of reductions that are common in track and field contracts. Mr. Capriotti therefore asked you to confirm whether reductions or any other material terms were excluded from written terms you provided to NIKE. Such information is necessary for NIKE to honor its commitment to match all material terms of the January 20, 2016 New Balance offer. Because NIKE has already agreed to match such



Boris Berian
February 19, 2016
Page 2

terms, however, it has invoked its right of first refusal, which precludes you from negotiating further with New Balance for a new or revised offer.

We want to be clear that NIKE remains extremely enthusiastic about continuing to work with you and is committed to maintaining a positive and mutually beneficial working relationship in the future. Nonetheless, NIKE is also committed to enforcing the terms of its sponsorship agreements and it is prepared to take all necessary legal action to preserve its contractual rights.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Per A. Ramfjord

PAR:llg

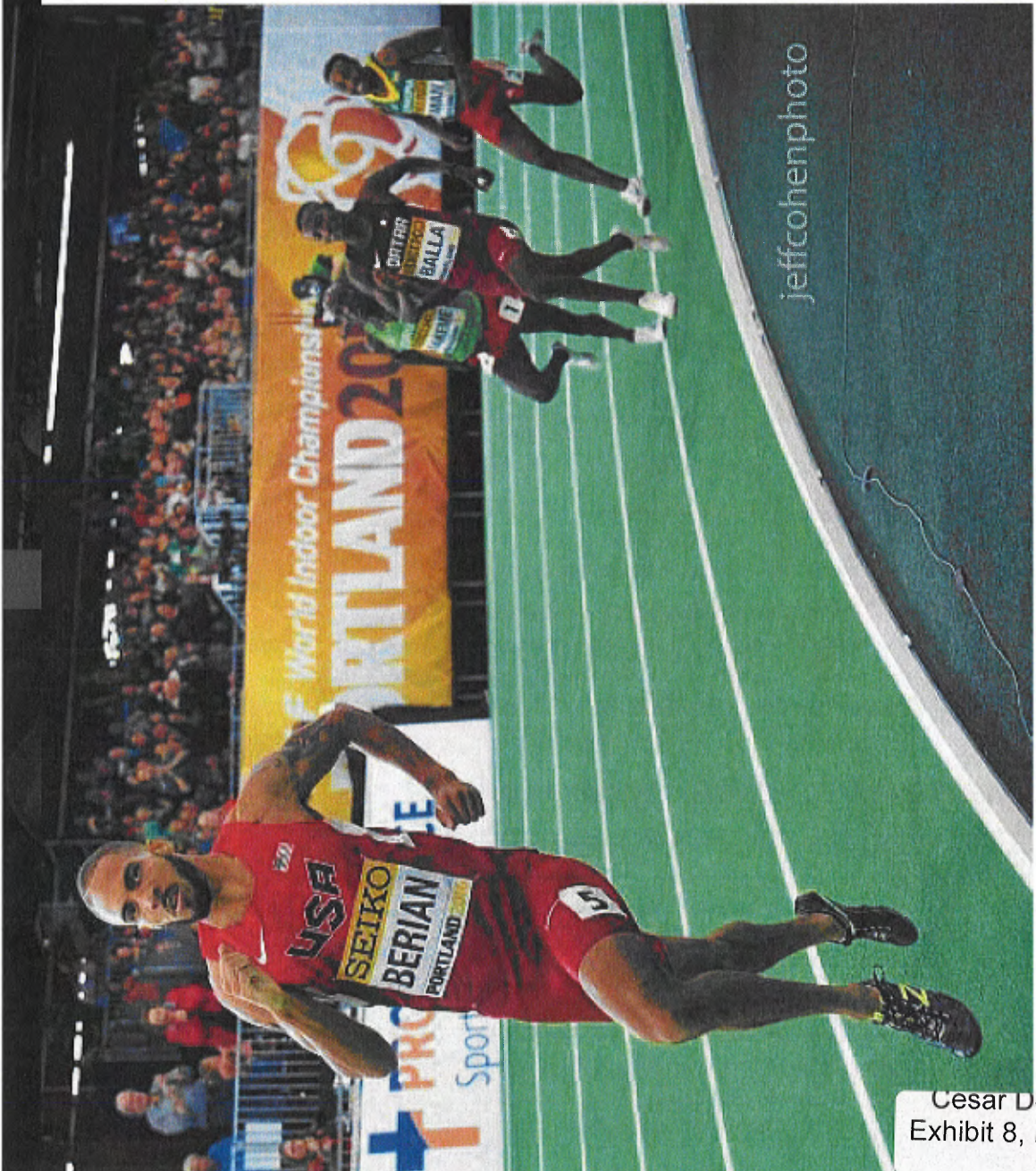
cc: Merhawi Keflezighi
John Capriotti, NIKE
Ben Cesar, NIKE
Leah Rinfret, NIKE



Cesar Declaration
Exhibit 7, Page 1 of 2



Cesar Declaration
Exhibit 7, Page 2 of 2



borisgump800
IAAF World Indoor C...

Follow

2,234 likes

9w

borisgump800 USA Champ wasn't good enough. I wanted that #1 World spot! Now that I won it, I can't believe it! Way too surreal! The training has paid off, but it's not over. It's just gonna get harder and I won't let up an ounce!! Grateful to have an amazing coach for guidance, and support of an amazing team!!! Outdoor is back and I'm here for bigger names!!! PC:@jeffcohenphoto #TeamUSA #bigbeartc

view all 77 comments

jacopo_zanatta @leonardotesini
@alessandro_dal_ben Matteon ☺

destinytrack42 Proud of you! ♥

Log in to like or comment



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Azusa Pacific Univers...

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644 likes

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borisgump800 Love training on days like this! #bigbeartc #nbrunning

soratos_miler **FIRST LIKE!**

steve_271 I dig the socks

sabahismagical Nice view! 😊

_giz.mo I want your socks

Log in to like or comment

...



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Jordan Payton Invitat...

481 likes

2w

borisgump800 Daily shenanigans
#bigbeartc #nbrunning
#troyandabedinthemooorning
PC:@justinbritton

catmcali 🐱

fernando.cabada @borisgump800 you
smiling these days huh. Living the life

teebreak14 @darsan8686 can't be a bad
sign.

dee32soon33 Hey there SEXY!
@borisgump800

Log in to like or comment

...





Boris Berian Retweeted



BigBearTC/NewBalance @BigBearTC · Apr 27

Shoe Advice: @newbalance 200 sprint spikes. Made for Speed! AKA "TAG's"

Boris, Selasi Lumax and New Balance Running



5



19



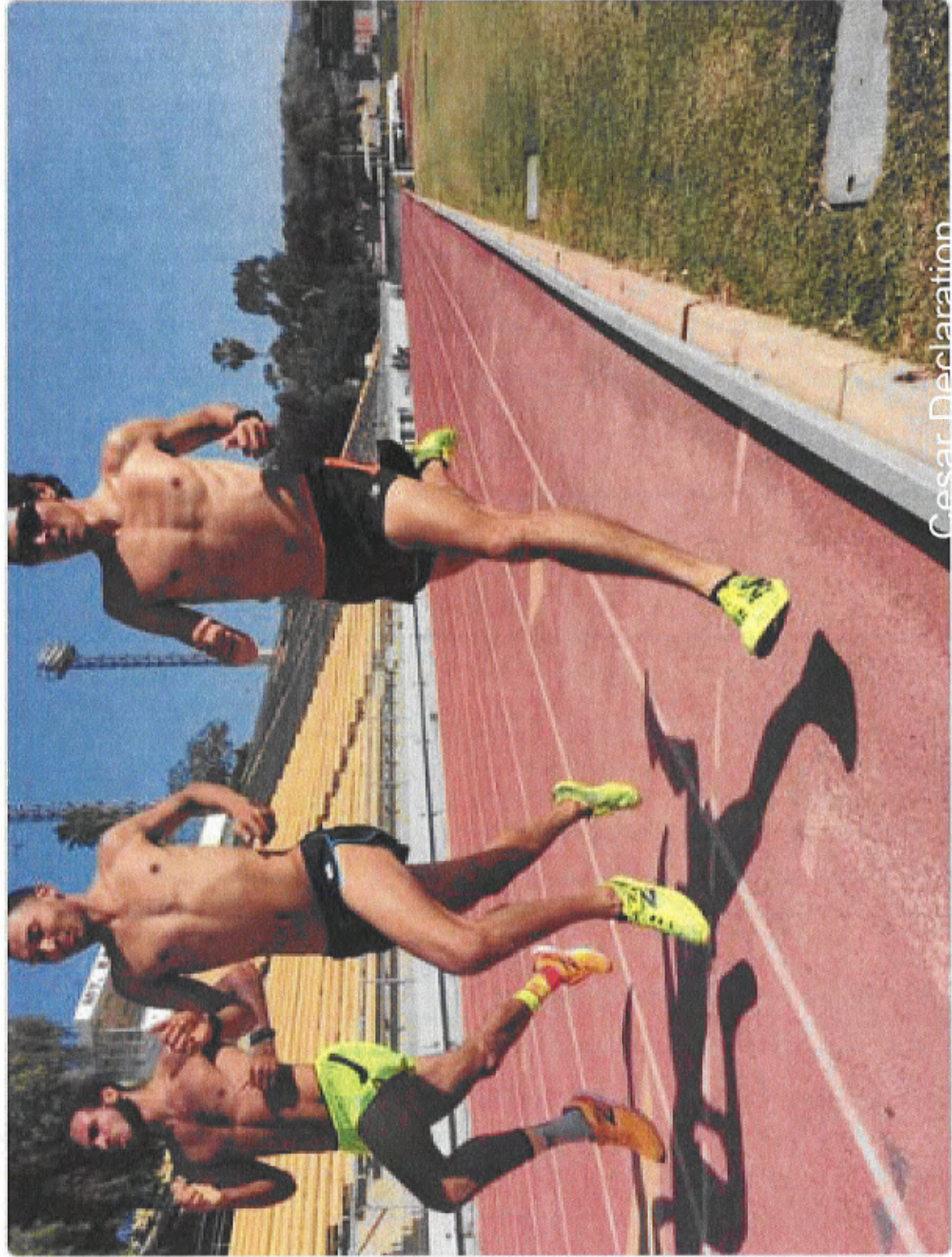


Boris Berian Retweeted



BigBearTC/NewBalance @BigBearTC · May 14

Working hard to have it and working even harder to keep it.
#alwaysinbeta #teamNB




9



52



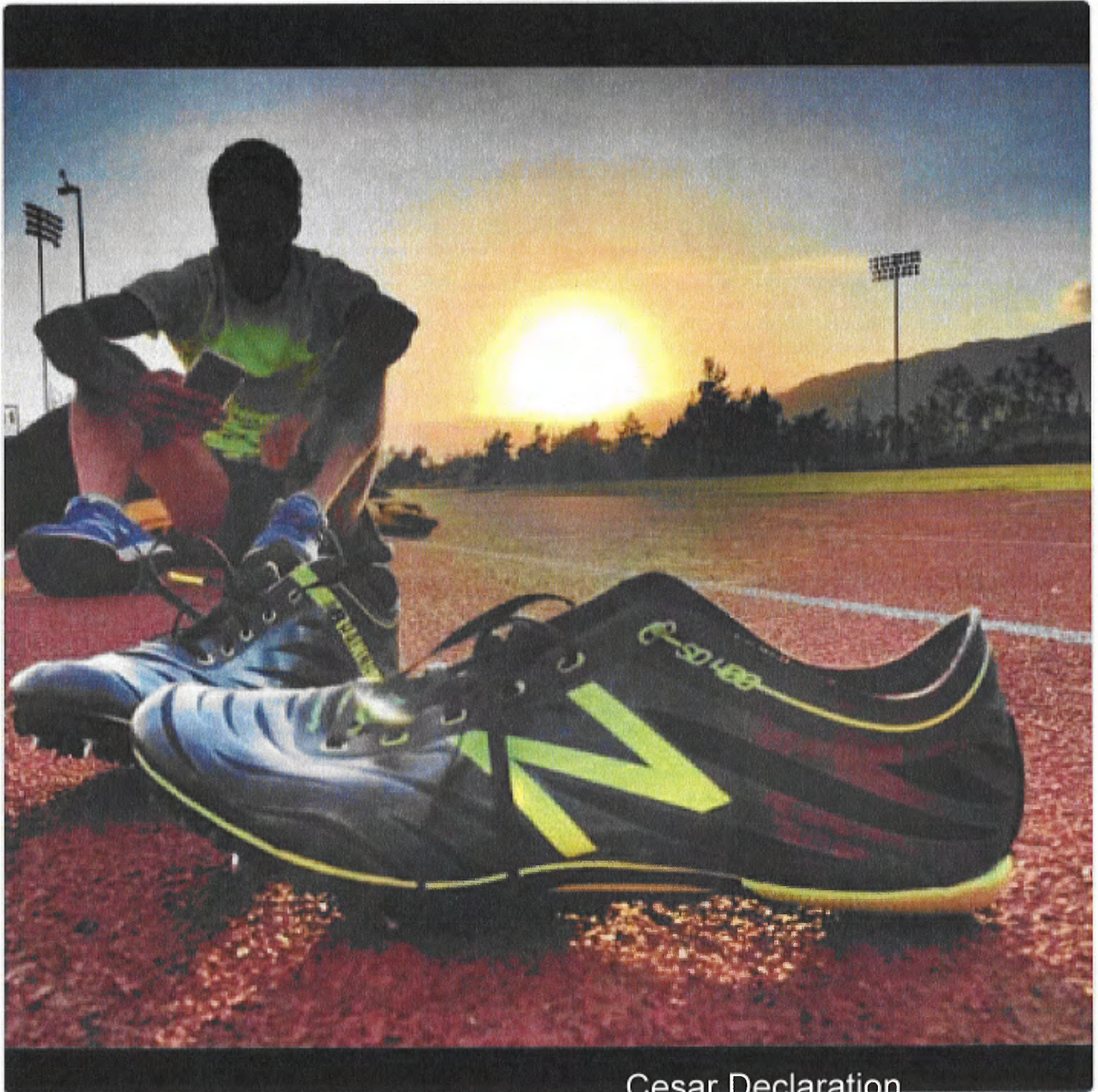
 Boris Berian Retweeted



Kyle Masterson @KYLE__MASTERSON · May 22

@borisgump800

With NBs on your feet you can't be beat. @NBRunning @newbalance



  7  20 