UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE: SKECHERS TONING SHOES PRODUCTS LIABILITY LITIGATION	MASTER FILE No. 3:11-MD-2308-TBR MDL No. 2308 Honorable Thomas B. Russell
This document relates to: Grabowski v. Skechers U.S.A., Inc., S.D. California, C.A. No. 3:10-01300	Case No.: 3:12-CV-00204-TBR

SUPPLEMENTAL DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, TIMOTHY G. BLOOD, declare:

1. I am the managing partner of Blood Hurst & O'Reardon, LLP ("BHO"), co-counsel for plaintiff in the above captioned action and one of the firms proposed as Class Counsel. I submit this declaration in further support of the Motion for Preliminary Approval of Class Action Settlement. I make this declaration based on my personal knowledge and on information and belief from my knowledge of the lawsuit and its proceedings.

2. Sonia Stalker is the named plaintiff in an action originally filed against Skechers in the Central District of California. Stalker is not a plaintiff in the *Grabowski* action. Similarly, her counsel are not counsel of record or counsel for any party in the *Grabowski* action.

3. Stalker and her counsel contend this settlement should not be preliminarily approved and that neither BHO nor Milberg LLP should be appointed Class Counsel because, among other things, Stalker's counsel were the first to identify a potential lawsuit against a different company called MBT. See Dk. No. 95 at 3-4 (Opposition of plaintiff Sonia Stalker and Her Counsel to Motion for Preliminary Approval of Class Action Settlement).

4. Stalker's counsel, Ray Mandlekar and Christopher Morosoff, contacted me regarding a potential false advertising case against a ***different*** shoe manufacturer, MBT, in April 2010 because of the experience members of my firm and I have prosecuting consumer protection class actions. Mr. Mandlekar was known to me as we had previously both practiced at the same law firm. While at that firm, I practiced in what we informally referred to as the "consumer and insurance department" where I specialized in the litigation of consumer class actions based upon false and deceptive sales practices, including false advertising. To the best of my knowledge, while we were at that firm, Mr. Mandlekar did not work on any consumer protection cases, and instead was an associate working on securities or derivative cases. Mr. Mandelkar told me he wanted to work with my firm on the MBT matter because he and Mr. Morosoff lacked the experience and resources to properly litigate a false advertising action against MBT.

5. When he contacted me, Mr. Mandlekar was eager to file a case against MBT as soon as possible. However, other than some cursory investigation into advertisements, almost no investigation into the case had been done. I explained to him that the case had to be more

thoroughly investigated and I and others in my firm began that investigation. Nonetheless, approximately two weeks after he first contacted me regarding MBT, on May 8, 2010, he sent me a draft of a complaint he wanted to immediately file against MBT, informing that he wrote the complaint, "using the one in *Dannon* as a model." The *Dannon* case that Mr. Mandlekar referred to was one of the cases in which I represented the plaintiff and plaintiff class. I and those working under my supervision investigated, drafted and filed the complaint in *Dannon*, and I was appointed co-lead counsel in the *Dannon* nationwide class settlement, approved by Judge Polster of the Northern District of Ohio in 2010. The *Dannon* settlement, which involved false advertising of the health benefits of probiotics, was widely reported as the largest settlement of a false advertising case involving a food product. None of the lawyers now representing Ms. Stalker were involved in *Dannon*.

6. That Mr. Mandlekar used the *Dannon* complaint as a general framework for the MBT complaint was not objectionable. However, Mr. Mandlekar and Mr. Morosoff had in my opinion conducted insufficient research concerning the facts of MBT's alleged deceptive advertising, and accordingly their draft complaint lacked sufficient detail to make out a claim under the consumer protection laws, and otherwise lacked sufficient factual allegations. For example, the Mandlekar/Morosoff draft lacked sufficient analysis of the studies that purportedly supported MBT's advertising claims. These studies, and any other research in this area, should form the heart a false advertising case of that kind. I also felt that analysis of this research was critical to ensuring that a valid claim existed and critical to properly framing the complaint and, in turn, the action. Accordingly, my firm located and contacted potential experts, ultimately retaining a consulting expert who is a medical doctor, professor and clinical researcher on the orthopedic and physiological effects of footwear on the human body, and who studies, develops and designs footwear for orthopedic use. None of the counsel for Ms. Stalker was involved in any of this. Instead, Mr. Mandlekar repeatedly expressed dissatisfaction with the pace of the case work-up, urging me to simply file a complaint. Ignoring these pleas, and working closely with the consulting expert to analyze the relevant studies, my firm significantly revised the complaint and sent the substantially revised draft complaint to Mr. Mandlekar on June 9, 2010.

Mr. Mandlekar likely should have used the complaint my firm and I had drafted. Three weeks later on July 1, 2010, Mr. Mandlekar filed his original draft complaint; largely or wholly ignoring my firm's suggested revisions. A first amended complaint was filed by Mr. Mendlekar on September 17, 2010, and a second amended complaint was filed on October 22, 2010. The defendants' motion to dismiss the second amended complaint was granted with leave to amend on the grounds that the complaint lacked Federal Rule of Civil Procedure 9(b) specificity, that plaintiff had not adequately alleged standing, and that as alleged the advertising claims constituted non-actionable puffery. Mr. Mandlekar filed a third amended complaint on March 22, 2011.

7. After repeatedly attempting to contact Mr. Mandlekar and Mr. Morosoff regarding my firm's June 9, 2010 draft of the MBT complaint, I was finally able to reach Mr. Mandlekar by telephone. He informed me that Mr. Morosoff in particular was unhappy with the delay in filing caused by the investigation of the merits of the case, and had decided to proceed with the MBT case without my firm. However, Mr. Mandlekar nonetheless requested that I provide him with the expert consultant's contact information, as they wished to retain her themselves.

8. In his declaration opposing preliminary approval, Mr. Morosoff states that "the complaint in the *Grawbowski* action appears to have been patterned after the complaint that Mr. Mandlekar and I drafted for use against MBT, . . ." Morosoff Dec., ¶11. As explained above, to the extent there are similarities it is not surprising because Mr. Mandlekar used the *Dannon* complaint, which I drafted, as his model for the MBT complaint. In truth, the two complaints bear little resemblance, either structurally or factually.

9. To my knowledge, to date Mr. Mandlekar and Mr. Morosoff have not been successful in their attempts to litigate deceptive advertising cases against rocker bottom shoe manufacturers such as Skechers.

10. Approximately two weeks after we filed the *Grabowski* case, on July 2, 2010, Mr. Mandlekar and Mr. Morosoff filed an identical case against Skechers in Los Angeles County Superior Court. On July 23, 2010, their case was removed to the Central District of California

(*Stalker v. Skechers USA Inc*., No. 2:10-cv-05460, C.D. Cal.) under the federal Class Action Fairness Act. According to records obtained on PACER, just one month after removal, Stalker moved for class certification, but without taking any discovery. Stalker's counsel did not take any written discovery, did not take any depositions and did not submit any expert testimony in support of the class certification motion. On January 21, 2011, United States District Court Judge James P. Otero stayed *Stalker* in deference to the *Grabowski* case pursuant to the first-filed rule. Judge Otero also vacated the *Stalker* motion for class certification.

11. Stalker and her counsel also suggest that BHO and Milberg are inadequate class counsel because of one sentence on the website we established for the subject settlement. The sentence was written by the claims administrator and follows standard language commonly used. The sentence was not on the home page, but in the "Frequently Asked Questions" link. The sentence read: "The Court has designated attorneys Timothy G. Blood, of Blood Hurst & O'Reardon, LLP and Janine L. Pollock, of Milberg LLP to represent you and the other class members in this lawsuit." This statement was not accurate at that time because this Court has not designated Class Counsel. With ordinary class action settlements, a settlement website would not be publically accessible until after a court granted preliminary approval. However, because this settlement was being done in conjunction with the Federal Trade Commission, presenting an excellent opportunity to inform the class about the proposed settlement, we made the settlement website publically accessible early to allow us to capture claims submitted by potential class members.

12. While the sentence on the "Frequently Asked Questions" page was inaccurate, the sentence was on the website for only about 26 hours. The website went live on May 16, 2012 at 10:00 a.m. central time. Plaintiff's counsel noticed the misstatement on May 17, 2012 and at 11:45 a.m. pacific time, an attorney from my firm, Paula Roach, contacted the website administrator to have it corrected. The statement was immediately corrected and has since read: "Timothy G. Blood, of Blood Hurst & O'Reardon, LLP and Janine L. Pollock, of Milberg LLP are proposed Class Counsel to represent you and the other Class Members in this lawsuit."

13. Providing potential class members with a contact from plaintiff's counsels' office is important so we can answer questions they may have. Since the settlement website went live, Milberg and my firm have fielded hundreds of inquiries from potential members of the class about the proposed settlement.

14. After receiving Stalker's opposition to the motion for preliminary approval, I contacted her counsel by letter to address Stalker's stated concern that she could not opt out of the settlement and pursue her case on an individual basis. I informed that the settlement agreement clearly permitted Stalker, and any other class member, to opt out of the proposed settlement and offered to consider her as having requested to exclude herself. By return email, Stalker's counsel informed that Stalker did not currently wish to exclude herself, and that her statement in the opposition brief was "merely a recognition of her future right to exclude herself if she choose to do so[.]" See Exs. 1 and 2 attached hereto.

15. According to information provided to me on June 22, 2012, by the BMC Group (the claims administrator for the proposed settlement), 281,147 claim forms have been submitted seeking a total of $26,482,061.00 in claims.

16. Based on my review and data supplied to me by the proposed notice administrator for the proposed settlement, the notice efforts related to the FTC's May 16, 2012, press conference generated news coverage about the settlement in every major television network in the United States and over 2,000 print and online newspapers. The settlement was the lead or a primary story on numerous television and radio shows and in many of the print and online newspapers.

17. I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct, except those matters stated on information and belief, and as to those matters, I believe them to be true. Executed on this 25th day of June, 2012, at San Diego, California.

s/ *Timothy G. Blood*
TIMOTHY G. BLOOD

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 25, 2012.

s/ *Timothy G. Blood*
TIMOTHY G. BLOOD

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