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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

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

BLOOD HURST & O'REARDON, LLP

BLOOD HURST & O'REARDON, LLP

1 I, TIMOTHY G. BLOOD, declare:

2 1. I am the managing partner of Blood Hurst & O'Reardon, LLP ("BHO"), co-  
3 counsel for plaintiffs in the above captioned actions and one of the firms proposed as Class  
4 Counsel pursuant to Fed. R. Civ. Proc. 23(g)(3). I submit this declaration in support of the  
5 Motion for Preliminary Approval of Class Action Settlement. I make this declaration based on  
6 my personal knowledge and on information and belief from my knowledge of the lawsuit and  
7 its proceedings.

8 2. Attached as Exhibit A is a copy of my firm's resume.

9 3. As described more fully below, the settlement presented for preliminary  
10 approval is the result of settlement discussion which started in December 2010 and intensified  
11 in May, 2011, comprising over a year's worth of negotiations. It is part of a resolution that  
12 includes a regulatory settlement reached with the Federal Trade Commission ("FTC") and the  
13 attorneys general and consumer protection bureaus of 44 states and the District of Columbia. I  
14 believe this is an outstanding settlement. It will provide cash payments to Class members and,  
15 because of the unique and innovative aspects of the class notice program, will result in a high  
16 level of participation by Class members.

17 4. Before this action was filed, my firm and my co-counsel investigated the factual  
18 allegations ultimately made in the complaint. For my firm, this investigation began in May of  
19 2010, when we began to research advertising claims about "toning" footwear. Our  
20 investigation included retaining and working with a professor and practicing medical doctor  
21 who is an expert in and conducts research concerning the orthopedic and physiological effects  
22 of footwear on the human body and who develops and designs footwear for orthopedic use. In  
23 addition to the medical doctor, we also retained a marketing expert.

24 5. Our investigation included researching, gathering and analyzing studies  
25 demonstrating the disadvantages of different types of toning footwear, including Skechers'  
26 toning footwear, as well as those purporting to show the advantages of different types of  
27 toning footwear. Our investigation also included an extensive search and review of Skecher's  
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1 advertising and marketing materials for its toning shoes. We also researched and analyzed  
2 available financial and sales information about Skechers, generally, and financial and sales  
3 information related to Skecher's toning shoes specifically.

4 6. On June 18, 2010, my firm along with Bonnett, Fairbourn, Friedman & Balint,  
5 P.C. filed a class action complaint in the United States District Court for the Southern District  
6 of California on behalf of plaintiff Tamara Grabowski. Also on June 17, 2010, plaintiff sent  
7 by certified mail a notice of letter pursuant to Cal. Civil Code §1781 of the California  
8 Consumers Legal Remedies Act ("CLRA") to permit plaintiff to seek damages under that act if  
9 defendant did not correct its alleged behavior within the statutory time period. California is an  
10 appropriate venue to allege a nationwide class because Skechers is headquartered in California  
11 and the conduct giving rise to the lawsuits occurred in California, thereby meeting the  
12 constitutional due process requirements. *See Washington Mut. Bank v. Superior Court*, 24  
13 Cal. 4th 906, 919 (2001).

14 7. On August 25, 2010, Milberg LLP along with Shepherd, Finkelman, Miller &  
15 Shah, LLP and Edgar Law Firm, LLC filed a similar class complaint in the United States  
16 District Court for the Southern District of California on behalf of plaintiff Venus Morga.  
17 Plaintiffs' counsel in both *Grabowski* and *Morga* worked together from early on to ensure  
18 efforts were not and are not duplicated. My firm, Milberg LLP, Bonnett, Fairbourn, Friedman,  
19 & Balint, P.C., Shepherd, Finkelman, Miller & Shah, LLP, Edgar Law Firm, LLC, and Cuneo,  
20 Gilbert & LaDuca, LLP are collectively referred to as Plaintiffs' Counsel. Also on August 25,  
21 2010, counsel for *Morga* sent a notice letter pursuant to California Civil Code §1781.

22 8. Skechers answered the *Grabowski* and *Morga* complaints on August 20, 2010  
23 and October 15, 2010, respectively. Thereafter, all discovery and pretrial and trial dates in the  
24 *Grabowski* and *Morga* actions were coordinated before Judge Jeffrey T. Miller in the United  
25 States District Court for the Southern District of California. On February 7, 2011, plaintiffs  
26 jointly moved to file amended complaints. On February 17, 2011, plaintiffs' motion was  
27 granted, and on February 18, 2011, the *Grabowski* and *Morga* complaints were amended to  
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1 allege damages under the CLRA and to add additional factual allegations. Skechers answered  
2 the *Grabowski* and *Morga* amended complaints on March 7, 2011.

3 9. On May 11, 2012, pursuant to Fed. R. Civ. Proc. 15(a)(2), a second amended  
4 complaint was filed in *Grabowski*. These amendments were largely technical in nature to  
5 conform to aspects of the subject settlement, such as ensuring the class definition is consistent  
6 and using similar language as used in the Stipulation of Settlement to avoid any confusion.  
7 Skechers answered the second amended complaint on May 15, 2012.

8 10. In November 2010, the parties exchanged initial disclosures pursuant to Fed. R.  
9 Civ. Proc. 26 and negotiated a joint discovery plan, which was subsequently submitted to the  
10 court. On December 6, 2010, the parties attended the initial discovery and early neutral  
11 evaluation conference during which discovery, pretrial and trial dates were coordinated and set  
12 in both *Grabowski* and *Morga*. The parties first discussed the possibility of a resolution of the  
13 cases shortly after the early neutral evaluation conference, including settlement frameworks.

14 11. On December 20, 2010, Plaintiffs *Grabowski* and *Morga* jointly served written  
15 discovery on Skechers consisting of Requests for Production of Documents, Interrogatories,  
16 and Requests for Admissions. Plaintiff also drafted and provided to Skechers an electronic  
17 discovery protocol and proposed protective order for confidential discovery. The parties met  
18 and conferred concerning changes to the protective order on several occasions. On February 8,  
19 2011, Skechers provided responses to the discovery. The parties began meeting and  
20 conferring over outstanding issues with the responses.

21 12. While the parties were meeting and conferring, Skechers moved to stay the  
22 proceedings in *Grabowski* and *Morga* pending the Ninth Circuit's decision in *Mazza v.*  
23 *American Honda Motor Co., Inc.* and the Supreme Court's decision in *Wal-Mart Stores, Inc. v.*  
24 *Dukes*. Plaintiffs opposed the motion. On March 7, 2011, Judge Miller granted Skecher's  
25 motion to stay all proceedings so that the court could benefit from any guidance provided by  
26 the decisions in *Mazza* and *Dukes*. On July 1, 2011, after the Supreme Court issued its opinion  
27 in *Wal-Mart Stores*, plaintiffs moved to lift the stay, but voluntarily withdrew the motion at  
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1 defendant's request based on favorable progress made in the settlement negotiations that  
2 resulted in the subject settlement. On January 13, 2012, after *Mazza* and *Dukes* were decided,  
3 Plaintiffs again moved to lift the stay.

4 13. On January 5, 2012, *Morga* and *Grabowski* were conditionally transferred to  
5 this Court for MDL proceedings along with the personal injury cases against Skechers  
6 concerning their toning shoes. Plaintiffs and Skechers opposed the conditional transfer. While  
7 Plaintiff's motion to lift the stay before Judge Miller was pending, on April 16, 2012, *Morga*  
8 and *Grabowski* were formally transferred to this Court for MDL proceedings.

9 14. Although entry of the order staying formal proceedings made plaintiffs'  
10 counsels' job more difficult, it did not stop plaintiffs' counsel from continuing to investigate  
11 and gather facts and taking other actions to allow plaintiffs' counsel to either move quickly on  
12 the litigation once the stay was lifted or apply sufficient litigation pressure on defendant to  
13 enable meaningful settlement discussions.

14 15. These other actions included pushing for settlement discussions by leveraging  
15 work my co-counsel and I had done with the Federal Trade Commission on other matters and,  
16 most significantly, in a factually similar lawsuit entitled *In re Reebok EasyTone Litigation*, No.  
17 4:10-cv-11977-FDS (D. Mass) ("*Reebok*"). Our efforts in *Reebok* resulted in a \$28.5 million  
18 cash settlement, which was granted final approval on January 19, 2012. The *Reebok*  
19 settlement, like this settlement, was part of a global resolution reached with the FTC and  
20 numerous state attorneys general and consumer protection bureaus.

21 16. The *Reebok* settlement was the first of its kind where the FTC and private  
22 litigants worked together in reaching a global resolution, with the class significantly benefiting  
23 because of increased awareness of the settlement (and corresponding increased participation in  
24 the settlement) without more money spent on a notice program and, arguably, a higher overall  
25 recovery, and certainly higher than many other consumer settlements obtained by the FTC  
26 alone. There, as here, the recovery for consumers is administered through the class action.

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1           17.     Because the approach was new and involved a large regulatory agency, the  
2 *Reebok* settlement required a significant amount of effort to formulate a framework for  
3 resolution and bring about that resolution. For example, I met with each of the five FTC  
4 Commissioners, including the Chairman of the FTC, in Washington, D.C. Both before and  
5 after these meetings, I also worked extensively with other high-level FTC staff members about  
6 a resolution of *Reebok*. The work we did in *Reebok* made the settlement here possible.

7           18.     In this case, settlement discussions began in December 2010, shortly after Early  
8 Neutral Evaluation Conference held in *Grabowski* and *Morga* with the Magistrate Judge  
9 assigned to the case in the United States District Court for the Southern District of California.  
10 By the time of the conference, we strongly suspected that the FTC had begun or was about to  
11 begin a non-public investigation of Skechers. More substantive settlement discussions began  
12 in March 2011, during which time I proposed the joint private class/FTC approach. By May  
13 2011, the parties were ready to have a face-to-face meeting to discuss settlement structure. On  
14 May 17, 2011, that meeting was held at defendant's counsel's office in Newport Beach,  
15 California. This began a six-month long series of settlement negotiations between Skecher's  
16 counsel, Plaintiffs' Counsel, the FTC, and to a lesser degree, the states.

17           19.     Plaintiffs' Counsel's involvement with the FTC was substantial. Based on my  
18 past experience with the FTC, including in *Reebok*, it was crucial that we coordinate with the  
19 FTC to every extent possible so that the settlement result was the best for the Class. The level  
20 of coordination has been very high and very productive.

21           20.     At the end of November 2011, the broad agreement of the settlement terms,  
22 including the amounts, had been reached. Every aspect of this settlement was heavily  
23 negotiated, including the overall dollar amount of the settlement and each aspect the  
24 Stipulation of Settlement and exhibits, including the release, the amounts available to  
25 individual Class Members making claims, the claims process, and the class member notice and  
26 outreach program. Beginning in November 2011 to the recent past, the parties worked to  
27 document and finalize numerous details. Meanwhile, all of these negotiations were done  
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1 within the context of corresponding agreements between Skechers and the FTC and state  
2 attorneys general and consumer protection bureaus.

3 21. During our initial discussions with Skechers concerning settlement, I conveyed  
4 that Plaintiffs' Counsel required Skechers to provide additional discovery before the parties  
5 could reach agreement to settle the actions in order to ensure that we did not miss any relevant  
6 aspect of the case in our investigation, Rule 26 information or otherwise. Plaintiffs requested  
7 and were provided with and thoroughly reviewed relevant documents from Skechers,  
8 including electronically stored information regarding: (a) product design, initiative and  
9 development; (b) scientific studies and research; (c) marketing, advertising, media and public  
10 relations; and (d) sales and pricing data. In total, Skechers produced over 13.5 GB of data,  
11 including 6,574 documents encompassing 24,500 pages. Plaintiffs' Counsel organized a team  
12 of attorneys who reviewed and analyzed Skecher's production.

13 22. Early in this case, Plaintiffs' Counsel also interviewed key witnesses at  
14 Skecher's main competitor, Reebok, who provided important information on and context about  
15 the toning shoe industry in general, Skechers in particular, product testing and advertising and  
16 marketing strategy.

17 23. Using this information, along with Skecher's document production and pre-suit  
18 investigation, Plaintiffs' Counsel interviewed key witnesses produced by Skechers who had  
19 direct knowledge of the facts at issue and who were at the center of the circumstances alleged.  
20 Over the course of days, Plaintiffs' Counsel interviewed: (i) Savva Teteriatnikov, Vice  
21 President of Design at Skechers (original designer of the Shapeup shoe) concerning the design  
22 and development of Skechers' Toning Shoes and studies related to Skechers' health claims;  
23 (ii) George Zelinsky, President of Retail Stores for Skechers concerning Skechers' corporate  
24 structure, retail pricing for Skechers' Toning shoes, and Skechers' health claims regarding the  
25 Skechers' Toning Shoes; (iii) Rick Graham, Senior Vice President of Domestic Shoe Sales for  
26 Skechers concerning pricing, sales and revenue data for Skechers' Toning Shoes, and in-store  
27 advertising for Skechers' Toning Shoes; and (iv) Jennifer Clay, Vice President of Corporate  
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1 Communications concerning Skechers' advertising and marketing of Skechers' Toning Shoes.  
2 These interviews provided Plaintiffs' Counsel with additional information confirming their  
3 allegations regarding Skecher's product testing, advertising and marketing strategy.

4 24. Agreement was reached on all of the substantive terms of the settlement *and* the  
5 settlement was memorialized in the Settlement Agreement before we began discussions with  
6 Skecher's counsel about plaintiffs' attorneys' fees and costs, other than the fact that whatever  
7 the amount awarded by the Court, attorneys' fees and expenses would be paid on top of and in  
8 addition to the settlement consideration to be paid to the Class. As with the other aspects of  
9 the settlement, negotiations over fees and costs were hard-fought, with plaintiffs' counsel  
10 ultimately agreeing to receive less than standard benchmarks under applicable law. Skechers  
11 ultimately agreed to not oppose application of attorneys' fees and expenses not to exceed \$5  
12 million. This amount will compensate the four firms that have collectively worked on the  
13 actions covered by the proposed settlement. Additionally, in a good faith effort to bring about  
14 the dismissal of the Later-Filed Actions, Class Counsel is also authorized to pay a portion of  
15 the Attorneys' Fees and Expenses awarded by the Court to counsel for plaintiffs in Later-Filed  
16 Actions.

17 25. I believe this settlement meets each of the requirements for preliminary and  
18 final approval. As described above, the negotiations leading to this settlement occurred at  
19 arm's-length and were hard-fought. The settlement occurred after a thorough investigation of  
20 the facts and analysis of the legal claims. Based on the pre- and post- filing investigations and  
21 discovery, work with experts and extensive informal discovery, I believe there was more than  
22 ample information to negotiate a resolution of this action with sufficient knowledge of the  
23 strengths and weaknesses of the claims. Further, as indicated in my firm's resume and the  
24 resumes of my co-counsel, we have extensive experience successfully litigating this type of  
25 action. For more than the last 15 years, I have successfully litigated consumer false  
26 advertising actions like this one in courts across the country and have litigated similar "toning  
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BLOOD HURST & O'REARDON, LLP

1 shoe” actions, including *Reebok*. Defense counsel are also very experienced litigators.  
2 Obviously, the FTC specializes in false advertising matters.

3 26. I also believe the settlement consideration is adequate. Based on my experience  
4 in other cases involving products sold over the counter at retail where names and addresses are  
5 not available, I believe there likely will be sufficient funds to allow all claimants to receive all  
6 or most of the initial claim amounts indicated, and they may receive the full amount for which  
7 claimants may be eligible.

8 27. Attached as Exhibit B is a true and correct collection of exemplar  
9 advertisements concerning Skechers toning shoes. These exemplars were part of a larger  
10 collection of advertisements produced by defendant to Plaintiffs’ Counsel during the course of  
11 this litigation.

12 I declare under penalty of perjury under the laws of California and the United States  
13 that the foregoing is true and correct, except those matters stated on information and belief,  
14 and as to those matters, I believe them to be true. Executed on this 16th day of May, 2012, at  
15 San Diego, California.

16  
17 s/ Timothy G. Blood  
18 TIMOTHY G. BLOOD