

# EXHIBIT 9

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY

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

**CONFIDENTIALITY AGREEMENT FOR DISCOVERY  
MATERIALS MADE AVAILABLE TO CLASS MEMBERS**

Pursuant to the Settlement Agreement and all of its attached exhibits, which are incorporated herein by reference, including, but not limited to, this Confidentiality Agreement for Discovery Materials Made Available to Class Members (“Confidentiality Agreement”), it is hereby stipulated and agreed, by and between the undersigned, as follows:

1. Pursuant to the Court’s Preliminary Approval Order, one or more of the Class Counsel, as determined by them (“Designated Class Counsel”), will provide the undersigned Class Member(s) and/or counsel retained at those Class Member(s)’ expense and/or certain other persons identified in Paragraph 6 (below) with access to documents Skechers disclosed to Class Counsel in the course of discovery in this Action.

2. The following documents and materials to be reviewed pursuant to this Confidentiality Agreement shall be deemed “Confidential Information.” “Confidential Information” shall be limited to:

- (a) the design, initiative, and development of scientific studies and research relating to the Eligible Shoes;
- (b) sales and accounting records relating to the Eligible Shoes;
- (c) marketing, advertising, media and public relations materials relating to the Eligible Shoes, including but not limited to media plans and budgets, and internal marketing research and analyses;
- (d) intercompany and intracompany communications relating to the information above; and
- (e) related information and materials.

In addition, any and all notes, memoranda, or dictation that copies, reproduces, reflects, incorporates, or otherwise refers to the Confidential Information made by any person afforded access to Confidential Information pursuant to this Confidentiality Agreement shall be treated as, and deemed to be, Confidential Information as well.

3. All Confidential Information to which the undersigned and/or certain other persons identified in Paragraph 6 (below) are given access is subject to this Confidentiality Agreement, and such Confidential Information shall not be used or disclosed to anyone or in any manner, except as provided herein.

4. The undersigned and/or certain other persons identified in Paragraph 6 (below) specifically certify(ies) that he/she/they shall use the Confidential Information solely for purposes of evaluating the fairness, reasonableness, and adequacy of the proposed settlement in this Action and for no other purpose, and not to attempt to extract a payment in return for withdrawing any actual or contemplated objection. In particular and without limitation, Confidential Information provided pursuant to this Confidentiality Agreement shall not be used: (a) in the litigation of this Action, should the Parties not reach a settlement; (b) in the litigation of this Action, if the Court should fail to approve the proposed settlement for any reason, or if any appellate court should reverse an order of this Court approving the proposed settlement; (c) in any other litigation, arbitration, or other judicial or

administrative proceeding, including, without limitation, in the investigation or preparation of any such proceeding and/or (d) to attempt to extract a payment in return for withdrawing any actual or contemplated objection.

5. The undersigned and/or certain other persons identified in Paragraph 6 (below) may inspect the Confidential Information by prior appointment at a time during regular business hours and at a location designated by Class Counsel. Duplication of documents or materials containing Confidential Information shall not be permitted, except for documents that the undersigned Class Member(s) and/or their counsel represent to the Court that they need to duplicate for the Court in support of a point of objection. The cost of any duplication shall be borne by the requesting Class Member or their counsel. Any such documents shall be filed under seal with the Court, labeled, "Confidential – Subject to Protective Order," and shall be delivered to the Clerk of the Court in an envelope bearing the notation, "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION SUBMITTED UNDER SEAL PURSUANT TO COURT ORDER." However, in the course of inspecting the Confidential Information, the undersigned Class Member(s) and/or certain other persons identified in Paragraph 6 (below) shall be permitted to make a reasonable amount of notes reflecting their review of Confidential Information, which shall also be treated as Confidential Information.

6. Access to Confidential Information shall be limited to those persons who are working directly on the Class Member's behalf, to whom it is necessary that the Confidential Information be disclosed and who are:

- a. the undersigned Class Member(s);
- b. their undersigned counsel;
- c. employees of such counsel assigned to and necessary to assist such counsel in evaluating the proposed settlement; and

- d. consultants or experts, to the extent necessary to assist the undersigned Class Member(s) and/or their counsel in evaluating the proposed settlement.

7. Any person given access to Confidential Information shall be advised, prior to being granted access, of the terms of this Confidentiality Agreement and of the Court's Preliminary Approval Order and shall thereby become bound by their terms, including without limitation, the requirement that such Confidential Information may not be disclosed to any person other than those described in Paragraph 6 (above). In addition, access to Confidential Information shall not be provided to any person described in Subparagraphs 6.c or 6.d of this Confidentiality Agreement until and unless such person has executed an undertaking in the form attached hereto as Exhibit A. The individual who provides access to Confidential Information to such person shall retain the executed undertaking and shall provide a copy of it to Designated Class Counsel and to Skechers's Counsel.

8. By providing access to Confidential Information, no party to this Action shall be deemed to have waived any claim that such information is privileged, confidential, or protected from discovery as attorney work product, nor shall any party use this Confidentiality Agreement as an admission or concession that the Confidential Information is relevant, material, responsive, admissible, or otherwise discoverable in any pending or future litigation or judicial or administrative proceeding. The undersigned Class Member(s) and/or certain other persons identified in Paragraph 6 (above) agree that they, or any of them, shall not contend or otherwise take the position in this or in any other pending or future litigation or judicial or administrative proceeding that any party has waived the attorney-client privilege and/or the protection of the attorney work product doctrine, or any other privilege or protective doctrine, with regard to Confidential Information.

9. The terms of this Confidentiality Agreement shall survive the termination of this Action. At the earlier of: (a) the conclusion of any or all appeals of the Final Order and/or Final Judgment approving the proposed settlement; or (b) such time as the parties terminate their Settlement Agreement,

all persons having received Confidential Information shall either return such material and all copies thereof (including notes and other records containing or reflecting Confidential Information) to Skechers's Counsel or shall destroy such material. Skechers reserves the right to demand written certification of destruction from any person who has been given access to Confidential Information.

10. The terms of this Confidentiality Agreement shall be enforceable by any aggrieved party, including any party to this Action. The undersigned and/or other persons identified in Paragraph 6 (above) agree(s) that, if he/she/they fail to comply with this Confidentiality Agreement, Skechers may suffer irreparable harm that may not be adequately compensated for by monetary damages alone. Any breach of the terms of this Confidentiality Agreement shall give rise to any and all applicable legal and equitable remedies for enforcement of the Confidentiality Agreement and/or relief, including, without limitation, injunctive relief and/or damages, for its breach, in addition to any other remedies available at law.

11. Pursuant to the Court's Preliminary Approval Order incorporating this Confidentiality Agreement, any breach of the terms of this Confidentiality Agreement shall constitute a violation of the Courts Preliminary Approval Order and may result in an order of contempt of Court and/or other sanctions, upon application to the Court by any party aggrieved by such violation, including any party to this Action. The undersigned and/or certain other persons identified in paragraph 6 above consent to the jurisdiction of the United States District Court for the Western District of Kentucky for purposes of interpretation and enforcement of the terms of this Confidentiality Agreement.

12. Any dispute over the meaning or interpretation of this Confidentiality Agreement shall be governed by the laws of the State of California, disregarding any conflicts-of-law provisions.

13. The undersigned Class Member(s) and/or their counsel agree(s) to notify Class Counsel and Skechers's Counsel immediately: (a) of any disclosure of Confidential Information in violation of this Confidentiality Agreement and or the Court's Preliminary Approval Order, even if inadvertent; and

(b) if any person granted access to the Confidential Information under this Confidentiality Agreement is served with or otherwise receives a subpoena, summons, court order, request or application requiring disclosure of Confidential Information. In any such instance, the undersigned Class Member(s) and/or their counsel agree(s): (a) not to oppose Skechers's efforts to prevent the disclosure of the Confidential Information; and (b) not to surrender the Confidential Information to any third party without the consent of Skechers or except by the final order of a court with competent jurisdiction.

14. The notice required in Paragraph 13 of this Confidentiality Agreement must be provided by e-mail and overnight delivery service to:

JEFFERY A. BARKER  
O'MELVENY & MEYERS LLP  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067  
jbarker@omm.com  
Telephone: (310) 246-6763

JON KARDASSAKIS  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
221 North Figueroa Street, Suite 1200  
Los Angeles, CA 90012  
kardassakis@lbbslaw.com  
Telephone: (213) 250-1800

JANINE L. POLLACK  
MILBERG LLP  
One Penn Plaza  
New York, NY 10119  
jpollack@milberg.com  
Telephone: (212) 594-5300

TIMOTHY G. BLOOD  
BLOOD HURST & O'REARDON LLP  
701 B Street, Suite 1700  
San Diego, California 92101  
tblood@bholaw.com  
Telephone: (619) 338-1100

15. No waiver by any party hereto of any breach of any term or condition of this Confidentiality Agreement shall be deemed a waiver of a similar or dissimilar term or condition.

16. The waiver by one party of any breach of this Confidentiality Agreement by another party shall not be deemed a waiver of any prior or subsequent breach of this Confidentiality Agreement.

17. The undersigned certify(ies) and agree(s) that he/she/they: (a) has read, understands, consents, accepts, and agrees to be bound by the terms of this Confidentiality Agreement and the Preliminary Approval Order and by the terms of any future Orders of the Court concerning the information he/she shall receive; and (b) shall use the Confidential Information solely for the purposes of evaluating the fairness, reasonableness and adequacy of the proposed settlement in this Action and for no other purpose.

18. This Confidentiality Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original.

Dated: \_\_\_\_\_

COUNSEL, INDIVIDUALLY AND ON BEHALF OF  
THE CLASS MEMBER(S):

\_\_\_\_\_ [Signature]  
\_\_\_\_\_ [Print Name]  
\_\_\_\_\_ [Firm Name]  
\_\_\_\_\_ [Print Name of Class Member(s)]  
\_\_\_\_\_ [Address and Telephone Number]

THE CLASS MEMBER(S):

\_\_\_\_\_ [Signature]  
\_\_\_\_\_ [Print Name]  
\_\_\_\_\_ [Address and Telephone Number]



**EXHIBIT A TO THE CONFIDENTIALITY AGREEMENT**

The undersigned hereby certifies that he/she understands, consents and acknowledges that Confidential Information is being provided to him/her pursuant to the terms and restrictions of the Settlement Agreement preliminarily approved by the United States District Court for the Western District of Kentucky (the "Court") in *Grabowski v. Skechers U.S.A., Inc.*, No. 3:12-cv-00204 (W.D. Ky.), by the Court's Preliminary Approval Order. The undersigned also certifies that he/she has been provided with the Confidentiality Agreement, has read, understands, consents, accepts and agrees to be bound by its terms.

The undersigned acknowledges that breach of the Confidentiality Agreement shall be actionable by any aggrieved party, including any party to the aforementioned Action, and that such breach shall subject the undersigned to any and all applicable legal and equitable remedies for enforcement of the Stipulation and/or relief, including damages, for its breach. The undersigned also acknowledges that breach of the Stipulation will violate the Court's Order and may subject the undersigned to an order of contempt of Court or other sanctions, upon application to the Court by any party aggrieved by such violation, including any party to the aforementioned Action. The undersigned hereby subjects himself/herself to the jurisdiction of the Court for purposes of enforcement of the terms and restrictions of the Stipulation and/or the Preliminary Approval Order.

Dated: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_