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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

SETTLEMENT AGREEMENT

BLOOD HURST & O'REARDON, LLP

TABLE OF EXHIBITS

Document	Exhibit Number
Claim Form.....	1
Class Notice	2
Final Order	3
Final Judgment	4
Preliminary Approval Order.....	5
Summary Settlement Notice.....	6
Settlement Claim Procedures and Claim Calculation Protocol.....	7
Media and Notice Plan	8
Confidentiality Agreement	9
Eligible Shoes	10

BLOOD HURST & O'REARDON, LLP

1 **IT IS HEREBY STIPULATED AND AGREED**, by, between and among
 2 Plaintiff Tamara Grabowski (“Plaintiff Grabowski”) and Defendant Skechers U.S.A.,
 3 Inc. (“Defendant” or “Skechers”), with all terms as defined below, through their duly-
 4 authorized counsel, that the above-captioned action, *Grabowski v. Skechers U.S.A.,*
 5 *Inc.*, No. 3:12-cv-00204 (W.D. Ky.), is settled and judgment shall be entered on the
 6 terms and conditions set forth in this Agreement, subject to the approval of the Court.

7 Plaintiff Venus Morga (“Plaintiff Morga”) has concurrently pending in this
 8 Court a related action captioned *Morga v. Skechers U.S.A., Inc.*, No. 3:12-cv-00205
 9 (W.D. Ky.). Plaintiff Morga agrees that her related action shall be settled through this
 10 Agreement, and after the Final Settlement Date in this Action, counsel for Plaintiff
 11 Morga shall request that her action be dismissed with prejudice.

12 **I. INTRODUCTION**

13 **A.** On June 18, 2010, Plaintiff Grabowski filed a class action complaint
 14 captioned *Grabowski v. Skechers U.S.A., Inc.*, No. 3:10-cv-01300-JM(WVG) (the
 15 “Action”), in the United States District Court for the Southern District of California.
 16 Plaintiff Grabowski alleged, among other things, that Skechers manufactured, marketed
 17 and sold toning footwear known as Shape-ups, Tone-ups, Skechers Resistance Runner,
 18 and Shape-ups Toners (collectively “Skechers Toning Shoes”). Through a nationwide
 19 advertising campaign, Skechers sold its products by advertising that wearing Skechers
 20 Toning Shoes would provide a variety of fitness benefits ordinary footwear could not
 21 provide. According to Plaintiff Grabowski, Skechers’ promises included that wearing
 22 Skechers Toning Shoes would improve posture, promote weight loss, strengthen the
 23 back, improve blood circulation, promote sleep, reduce stress, reduce physical stress on
 24 knees, legs and ankle joints, and burn calories. Plaintiff Grabowski also alleged that
 25 Skechers advertised that clinical studies showed Skechers Toning Shoes were
 26 scientifically proven to provide certain of these fitness benefits. Plaintiff Grabowski’s
 27 complaint challenged these advertisements, asserting that Skechers Toning Shoes are
 28 not proven to provide any of the claimed fitness benefits, and in fact, may cause or

1 exacerbate the very type of problems Skechers claims its footwear resolves. Based on
2 Skechers' alleged false and deceptive advertisements, Plaintiff Grabowski brought
3 causes of action for violation of California's Consumers Legal Remedies Act
4 ("CLRA"), Civ. Code §1770, *et seq.*, violation of the Unfair Competition Law
5 ("UCL"), Bus. & Prof. Code §17200, *et seq.*, and breach of express warranty.

6 **B.** On August 25, 2010, roughly two months after the filing of the Action,
7 another class action captioned *Morga v. Skechers U.S.A., Inc.*, No. 3:10-cv-01780-
8 JM(WVG), was filed in the United States District Court for the District of California
9 (the "Morga Action"). Plaintiff Morga's allegations were the same as those in the
10 Action and included overlapping causes of action, including violations of California's
11 consumer protection statutes, and Plaintiff Morga sought to represent the identical
12 nationwide class as was alleged by Plaintiff Grabowski. Concurrent with her
13 complaint, Plaintiff Morga filed a notice of related case informing that under Civil
14 Local Rule 40.1, her action was related to the Action. On September 3, 2010, the
15 Morga Action was deemed related to the Action and transferred to Judge Jeffrey Miller
16 pursuant to the low number rule.

17 **C.** On February 18, 2011, amended class action complaints were filed in
18 both the Action and the Morga Action. The amended complaints, which were
19 substantively identical to one another, re-alleged Skechers' purported violations of
20 California's consumer protection laws, and asserted claims for breach of warranty. The
21 amended complaints also sought damages as permitted by the CLRA. Plaintiff
22 Grabowski and Plaintiff Morga (collectively, "Plaintiffs") sought to have their
23 complaints consolidated, which request was opposed by Skechers and denied by the
24 Court, meaning that there remain two related but separate actions pending before this
25 Court.

26 **D.** Prior to commencement of the Grabowski and Morga actions, Class
27 Counsel undertook an extensive investigation of the facts, which investigation included
28 interviews with purchasers across the country, review of publicly available Skechers'

1 advertisements of Shape-ups, and consultation with a medical doctor on the physical
2 effects of rocker bottom shoes. Based in part on the information gained in the pre-
3 filing investigation, Plaintiff's Counsel served comprehensive formal discovery
4 requests on Skechers in December 2010. Counsel's investigation continued during the
5 pendency of the Action and settlement negotiations.

6 **E.** Skechers filed answers to the amended complaints on August 20, 2010
7 and March 7, 2011 in which it expressly denied the allegations therein.

8 **F.** On May 11, 2012, a second amended class action complaint was filed in
9 the Action. Skechers filed an answer to the second amended complaint on May 15,
10 2012, in which it expressly denied the allegations therein.

11 **G.** Skechers expressly denies any wrongdoing and does not admit or
12 concede any actual or potential fault, wrongdoing, or liability in connection with any
13 facts or claims that have been alleged against it in the Action and the Morga Action.
14 Skechers contends that the fitness benefits of Shape-ups and other rocker bottoms shoes
15 have been extensively studied and confirmed in numerous well-designed clinical
16 studies, many of which have been published in peer-reviewed journals. This body of
17 scientific literature and experts in the field of biomechanics confirm that competent and
18 reliable scientific evidence supports the benefits advertised by Skechers for these shoes.
19 Skechers further denies that the Action and the Morga Action meet the requisites for
20 certification as a class action under federal law, except as part of a settlement class as
21 described in this Agreement. Nevertheless, Skechers considers it desirable to resolve
22 this Action and the Morga Action on the terms stated herein, in order to avoid further
23 expense, inconvenience, and interference with its business operations, and to dispose of
24 burdensome litigation. Therefore, Skechers has determined that settlement of this
25 Action and the Morga Action on the terms set forth herein is in its best interest.

26 **H.** This Agreement reflects a compromise between the Parties, and shall in
27 no event be construed as or deemed an admission or concession by any party of the
28 truth of any allegation or the validity of any purported claim or defense asserted in any

1 of the pleadings in the Litigation, or of any fault on the part of Skechers, and all such
 2 allegations are expressly denied. Nothing in this Agreement shall constitute an
 3 admission of liability or be used as evidence of liability, by or against any party hereto.

4 **I.** Skechers has produced relevant documents, including electronically
 5 stored information, to Plaintiff. Class Counsel have thoroughly reviewed the produced
 6 materials. In particular, Skechers has produced the following documentation regarding
 7 Eligible Shoes: (i) product design, initiative and development; (ii) scientific studies and
 8 research; (iii) marketing, advertising, media and public relations; and (iv) sales and
 9 pricing data. In total, Class Counsel was given access to approximately 6,574
 10 documents encompassing 24,500 pages and over 13.5 GB of data. In addition, Class
 11 Counsel conducted interviews of Skechers corporate witnesses who have been involved
 12 with the Eligible Shoes to address the following subjects: (i) advertising and marketing;
 13 (ii) pricing; (iii) design and development; and (iv) sales and revenue. Before entering
 14 into this Agreement, Class Counsel had conducted a thorough examination and
 15 evaluation of the relevant law, facts and allegations to assess the merits of the claims
 16 and could reasonably assess the strength of plaintiffs' claims and Skechers' liability,
 17 including its defenses.

18 **J.** On May 16, 2012, working in conjunction with Class Counsel, the
 19 Federal Trade Commission ("FTC") entered into a Stipulated Final Judgment and
 20 Order for Permanent Injunction and Other Equitable Relief ("Stipulated Order") with
 21 Skechers concerning its Skechers Toning Shoes. Pursuant to the Stipulated Order, the
 22 FTC filed a Complaint for Permanent Injunction and Other Equitable Relief against
 23 Skechers and its Skechers Toning Shoes alleging violations of the Federal Trade
 24 Commission Act and specifically 15 U.S.C. § 45(a), which prohibits "unfair or
 25 deceptive acts or practices in or affecting commerce," and 15 U.S.C. § 52, which
 26 prohibits the dissemination of any false advertisement in or affecting commerce.
 27 Actions by the Attorneys General in 44 states and the District of Columbia (the "AG
 28 Actions") were filed against Skechers. Consent Judgments and Agreed Final

Judgments (“Consent and Agreed Final Judgments”) were or will be entered in the AG Actions, settling all claims. This Settlement between Plaintiffs and Skechers, the Stipulated Order entered into between the FTC and Skechers, and the Consent and Agreed Final Judgments entered into between Skechers and the state Attorneys General are the products of work performed by Class Counsel, the FTC, and the state Attorneys General in conjunction, and the foregoing have coordinated these resolutions to maximize the settlement consideration available to the Class under this Settlement, including the monetary relief available to Class Members.

K. Based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel, on behalf of the other members of the proposed Class, have agreed to settle the Action pursuant to the provisions of this Agreement, after considering, among other things: (1) the substantial benefits to the Class Members under the terms of this Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Agreement promptly in order to provide effective relief to the Class Members.

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. “Action” means the lawsuit styled *Grabowski v. Skechers U.S.A., Inc.*, No. 3:12-cv-00204 (W.D. Ky.).

2. “Agreement” means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any subsequent amendments agreed to

1 by the Parties and any exhibits to such amendments, which are the settlement (the
2 "Settlement").

3 **3.** "Attorneys' Fees and Expenses" means such funds as may be
4 awarded by the Court to Class Counsel from Skechers to compensate all Plaintiffs'
5 Counsel for their fees and expenses in connection with the Action and the Settlement,
6 as described in Section IX of this Agreement.

7 **4.** "Claim" means the claim of a Class Member or his or her
8 representative submitted on a Claim Form as provided in this Agreement.

9 **5.** "Claimant" means a Class Member who has submitted a Claim.

10 **6.** "Claim Form" means the document, in substantially the same form
11 as Exhibit 1 attached to this Agreement.

12 **7.** "Claim Period" means the time period in which Class Members
13 may submit a Claim Form for review to the Class Action Settlement Administrator.
14 The Claim Period shall run until 30 days after the Fairness Hearing as initially set by
15 the Court.

16 **8.** "Claim Process" means that process for submitting Claims
17 described in this Agreement.

18 **9.** "Class Action Settlement Administrator" means the third-party
19 agent(s) or administrator(s) agreed to by the Parties and appointed by the Court. The
20 Parties agree that Rust Consulting, Inc. shall be retained to implement the mailed
21 notice, the website, claim review and related requirements of this Agreement as set
22 forth in Sections IV-VI of this Agreement.

23 **10.** "Class" means all persons or entities that, during the Class Period,
24 purchased in the United States any Eligible Shoes. Excluded from the Class are: (a)
25 Skechers' Board members or executive-level officers, including its attorneys; (b)
26 persons or entities who purchased the Eligible Shoes primarily for the purpose of
27 resale; (c) retailers or re-sellers of Eligible Shoes; (d) governmental entities; (e) persons
28 or entities who or which timely and properly exclude themselves from the Class as

provided in the Agreement; and (f) persons or entities who purchased the Eligible Shoes via the Internet or other remote means while not residing in the United States.

11. “Class Member” means a member of the Class.

12. “Class Counsel” means: Timothy G. Blood, of Blood Hurst & O’Reardon, LLP, and Janine L. Pollack, of Milberg LLP.

13. “Class Notice” means a notice substantially in the form attached as Exhibit 2.

14. “Class Period” means the period from August 1, 2008 up to and including the date of the first dissemination of the Summary Settlement Notice or Class Notice, whichever is earlier.

15. “Court” means the United States District Court for the Southern District of California.

16. “Eligible Shoes” means the following types of Skechers’ footwear: (a) Shape-ups rocker bottom shoes (“Shape-ups”); (b) the Resistance Runner rocker bottom shoes (“Resistance Runner”); (c) Shape-ups Toners/Trainers, and Tone-ups with podded outsoles (“Podded Sole Shoes”); and (d) Tone-ups non-podded sandals, boots, clogs, and trainers (“Tone-ups (Non-Podded Sole)”). The complete list of Eligible Shoes sold under these toning footwear lines is set forth in Exhibit 10.

17. “Fairness Hearing” means the hearing at or after which the Court shall make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

18. “Final Order and Final Judgment” means the Court’s order approving the Settlement and this Agreement, as described in Section X.B of this Agreement, which is to be substantially in the forms attached hereto as Exhibits 3 and 4, respectively.

19. “Final Settlement Date” means the date on which the Final Order and Final Judgment approving this Agreement becomes final (“Final Approval Date”). For purposes of this Agreement, Final Approval Date means:

a. For all matters other than Section IX, either:

(i) if no appeal has been taken from the Final Order and Judgment, "Final Approval Date" means the date on which the time to appeal therefrom has expired pursuant to Federal Rule of Appellate Procedure 4; or

(ii) if any appeal has been taken from the Final Order and Final Judgment, "Final Approval Date" means the date on which all appeals therefrom, including petitions for rehearing or reargument pursuant to Federal Rule of Appellate Procedure 40, petitions for rehearing en banc pursuant to Federal Rule of Appellate Procedure 35 and petitions for certiorari pursuant to Rule 13 of the Rules of the Supreme Court or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Judgment;

b. Solely for the purposes of payments made pursuant to Section IX, below, the later of the dates set forth above in 19(a)(i) and (ii) or the date on which the last of the six (6) Later-Filed Actions is dismissed with prejudice.

c. Notwithstanding either a. or b., above, if Class Counsel and Skechers agree in writing, "Final Approval Date" can occur on any other agreed date.

20. "Media Notice Administrator" means the Court-appointed third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that Jeanne Finegan of the Garden City Group, Inc. shall be retained to design, consult on and implement the notice to the class described in Section V of this Agreement.

21. "Parties" means Plaintiff Grabowski and Skechers, collectively, as each of those terms is defined in this Agreement.

22. "Plaintiff Grabowski" means Tamara Grabowski.

23. "Plaintiff Morga" means Venus Morga.

24. "Plaintiffs" means Plaintiff Grabowski and Plaintiff Morga.

25. "Plaintiffs' Counsel" means counsel for Plaintiffs, who are: Blood Hurst & O'Reardon, LLP; Milberg LLP; Bonnett, Fairbourn, Friedman & Balint, P.C.;

1 Shepherd, Finkelman, Miller & Shah, LLP; Edgar Law Firm, LLC; and Cuneo, Gilbert
2 & LaDuca, LLP.

3 **26.** “Preliminary Approval Order” means the order to be entered by
4 the Court preliminarily approving the Settlement as outlined in Section X.A of this
5 Agreement and that is substantially in the form attached hereto as Exhibit 5.

6 **27.** “Release” means the release and waiver set forth in Section VIII of
7 this Agreement.

8 **28.** “Released Parties” means Skechers, its past and present officers,
9 directors, employees, stockholders, agents, attorneys, administrators, successors,
10 subsidiaries, suppliers, distributors, assigns, affiliates, joint-ventures, partners,
11 members, divisions, predecessors, authorized retailers, resellers, and wholesalers of
12 Eligible Shoes for resale, including, without limitation, Skechers concept stores,
13 Skechers factory outlet stores, Skechers warehouse outlets, Skechers.com,
14 myshapeups.com, soholab.com, and Skechers’ Outlets.

15 **29.** “Settlement Claim Procedures and Claim Calculation Protocol”
16 means the protocol attached hereto as Exhibit 7.

17 **30.** “Skechers” means Skechers U.S.A., Inc.

18 **31.** “Skechers Counsel” means O’Melveny & Myers LLP and Lewis
19 Brisbois Bisgaard & Smith LLP.

20 **32.** “Summary Settlement Notice” means the Summary Class Notice
21 for publication substantially in the same form as Exhibit 6.

22 **B.** Other capitalized terms used in this Agreement but not defined in this
23 Section II shall have the meanings ascribed to them elsewhere in this Agreement.

24 **C.** The terms “he or she” and “his or her” include “it” or “its” where
25 applicable.

1 **III. CERTIFICATION OF THE SETTLEMENT CLASS**

2 Skechers, while continuing to deny that the Action meets the requisites for class
3 certification under Fed. R. Civ. P. 23 for any purpose other than settlement, hereby
4 consents, solely for purposes and in consideration of the Settlement set forth herein, to
5 the certification of the settlement Class, to the appointment of Class Counsel, and to the
6 conditional approval of Plaintiff Grabowski as a suitable representative of the Class.

7 The certification of the settlement Class, the appointment of the Plaintiff as class
8 representative, and the appointment of Plaintiffs' Counsel to act as Class Counsel, shall
9 be binding only with respect to this Settlement and this Agreement. If the Court fails to
10 approve this Agreement and the Settlement proposed herein for any reason, or if this
11 Agreement and the Settlement proposed herein is terminated, cancelled, or fails to
12 become effective for any reason whatsoever, this class certification, to which the
13 parties have stipulated solely for the purposes and in consideration of the Settlement of
14 this Action, this Agreement, and all the provisions of the Preliminary Approval Order,
15 shall be vacated by their own terms, and the litigation of the Action shall revert to its
16 status with respect to class certification as it existed prior to the date of this Agreement.
17 In that event, Skechers shall retain all rights it had immediately preceding the execution
18 of this Agreement to object to the maintenance of the lawsuit as a class action, and in
19 that event, nothing in this Agreement or other papers or proceedings related to the
20 Settlement shall be used as evidence or argument by any party concerning whether the
21 Action may properly be maintained as a class action under applicable law.

22 **IV. SETTLEMENT RELIEF**

23 Settlement relief shall consist of two primary components: (1) payments to
24 Class Members who submit valid Claims; and (2) conduct changes implemented by
25 Skechers relating to its marketing and advertising of Skechers Toning Shoes.

26 **A. Relief Amount**

27

28

1 **1.** In conjunction with the Consent Judgment entered into between
 2 Skechers and the FTC, Skechers shall deposit \$40 million (the “Escrowed Funds”) in
 3 escrow to be held by Rust Consulting, which shall be the “Escrow Agent.” Once
 4 Skechers deposits the Escrowed Funds with the Escrow Agent, any risk of loss shall
 5 pass from Skechers to the Escrow Agent.

6 **2.** The Escrowed Funds may be used for the payment of: (a) the
 7 costs and expenses that are associated with disseminating the notice to the Class,
 8 including, but not limited to, the Class Notice and the Summary Settlement Notice; (b)
 9 the costs and expenses associated with claims administration or other costs of
 10 administration agreed to by the parties; and (c) timely, valid, and approved Claims
 11 submitted by Class Members pursuant to the Claim Process. Class Counsel must
 12 approve any payment of costs or expenses under subsections (a) and (b) of this
 13 paragraph. Approval and payment of Claims under subsection (c) of this paragraph
 14 shall be in accordance with the terms of the Settlement Claim Procedures and Claim
 15 Calculation Protocol. Skechers shall not be liable for payment of any costs, expenses,
 16 or Claims authorized under this paragraph beyond its deposit of the Escrowed Funds.

17 **B.** Claim Form Submission and Review

18 **1.** Class Members may submit a Claim to the Claim Process during
 19 the Claim Period and the Class Action Settlement Administrator shall review and
 20 process the Claim pursuant to the Settlement Claim Procedures and Claim Calculation
 21 Protocol, which is attached as Exhibit 7. As part of the Claim Process, Class Members
 22 shall be eligible for the relief provided in this Agreement, provided Class Members
 23 complete and timely submit the Claim Form, which shall be included with the Class
 24 Notice, to the Class Action Settlement Administrator within the Claim Period, except
 25 as otherwise provided in the Settlement Claim Procedures and Claim Calculation
 26 Protocol, attached as Exhibit 7.

27 **2.** As further specified in the Settlement Claim Procedures and Claim
 28 Calculation Protocol, the Claim Form shall advise Class Members that, upon request

and under certain enumerated circumstances, the Class Action Settlement Administrator has the right to request verification of the purchase of Eligible Shoes, including, but not limited to, receipt(s) or other documentation demonstrating purchase of any and all of the Eligible Shoes during the Class Period. If the Class Member does not timely comply and/or is unable to produce documents to substantiate and/or verify the information on the Claim Form and the Claim is otherwise not approved, the Claim shall be disqualified.

3. The Class Action Settlement Administrator shall provide periodic updates to Class Counsel, the FTC, and Skechers regarding Claim Form submissions beginning not later than one week before the Fairness Hearing date and continuing on no less than a monthly basis thereafter.

4. The Class Action Settlement Administrator may begin to pay timely, valid, and approved Claims no earlier than ten (10) days after the close of the Claim Period, if and only if: (a) this period is after the issuance of the Court's Final Order and Final Judgment approving the Settlement; and (b) if the Final Settlement Date has not yet occurred, Skechers has approved in writing the commencement of such payment. Not later than sixty (60) days after either (i) the occurrence of the Final Settlement Date, or (ii) the date that Skechers, in its sole discretion, approves the payment of Claims prior to the occurrence of the Final Settlement Date, whichever is earlier, the Class Action Settlement Administrator shall have completed the payment to Class Members who have submitted timely, valid and approved Claims pursuant to the Claim Process.

5. The relief to be provided to eligible Class Members shall be as follows:

Shoes	Initial Amount	Maximum Amount
Shape-ups	\$40.00	\$80.00
Podded Sole Shoes	\$27.00	\$54.00

Tone-ups (Non-Podded Sole)	\$20.00	\$40.00
Resistance Runner	\$42.00	\$84.00

C. Adjustments and Remaining Funds

1. If the total of the timely, valid and approved Claims submitted by Class Members exceeds the available relief, minus any covered costs and expenses, each eligible Class Member's award shall be reduced on a *pro rata* basis.

2. If the total of the timely, valid and approved claims submitted by Class Members is less than the available relief, minus any covered fees and costs, each eligible Class Member's award shall be increased on a *pro rata* basis, with a maximum increase of up to, but not more than, double the initial amount as set forth in Section IV.B.5 above, not including any applicable sales taxes.

3. If there are any funds remaining from the claims process, including, but not limited to, un-cashed distributions made payable to eligible Class Members, any remaining funds shall be paid to the Federal Trade Commission.

D. Conduct Changes

In addition to the relief discussed above, as part of this Agreement, Skechers will agree to implement the conduct changes that are detailed in the Stipulated Order that will be entered into between Skechers and the FTC.

V. NOTICE TO THE CLASS

A. Duties of the Class Action Settlement Administrator and the Media Notice Administrator

1. The Media Notice Administrator shall be responsible for, without limitation, consulting on and designing the notice to the Class via various forms of media, including implementing the media purchases. In particular, the Media Notice Administrator shall be responsible for: (a) arranging for the publication of the Summary Settlement Notice; (b) designing and implementing notice to the Class by

1 various electronic media, including social media and electronic publications; (c) press
2 releases, as discussed in the Media and Notice Plan attached as Exhibit 8 to this
3 Agreement; (d) responding to requests from Class Counsel, the FTC and/or Skechers'
4 Counsel; and (e) otherwise implementing and/or assisting with the dissemination of the
5 notice of the Settlement.

6 **2.** The Class Action Settlement Administrator shall be responsible
7 for, without limitation, dissemination of Class Notice by mail and implementing the
8 terms of the Claim Process and related administrative activities that include
9 communications with Class Members concerning the Settlement, Claim Process, and
10 their options thereunder. In particular, the Class Action Settlement Administrator shall
11 be responsible for: (a) printing, mailing or arranging for the mailing of the Class
12 Notice; (b) handling returned mail not delivered to Class Members; (c) attempting to
13 obtain updated address information for any Class Notice returned without a forwarding
14 address; (d) making any additional mailings required under the terms of this
15 Agreement; (e) establishing a website that contains the Claim Form that can be
16 completed and submitted on-line; (f) establishing a toll-free voice response unit with
17 message and live operator capabilities to which Class Members may refer for
18 information about the Action and the Settlement; (g) receiving and maintaining on
19 behalf of the Court any Class Member correspondence regarding requests for exclusion
20 and objections to the Settlement; (h) forwarding inquiries from Class Members to Class
21 Counsel or their designee for a response, if warranted; (i) establishing a post office box
22 for the receipt of Claim Forms, exclusion requests, and any correspondence; (j)
23 reviewing Claim Forms according to the review protocols agreed to by the Parties and
24 set forth in Exhibit 7; and (k) otherwise implementing and/or assisting with the claim
25 review process and payment of the claims.

26 **3.** The Media Notice Administrator and the Class Action Settlement
27 Administrator shall coordinate their activities to minimize costs in effectuating the
28 terms of this Agreement.

1 **4.** If the Class Action Settlement Administrator or the Media Notice
2 Administrator fail to keep Class Counsel, Skechers or Skechers' Counsel informed,
3 make a material or fraudulent misrepresentation to, or conceal requested material
4 information from, Class Counsel, Skechers, or Skechers' Counsel, then the Party from
5 whom information was withheld or to whom the misrepresentation is made shall, in
6 addition to any other appropriate relief, have the right to demand that the Class Action
7 Settlement Administrator and/or the Media Notice Administrator, as applicable,
8 immediately be replaced. If the Class Action Settlement Administrator and/or the
9 Media Notice Administrator fail to perform adequately on behalf of Skechers or the
10 Class or Class Counsel, the Parties may agree to remove the Class Action Settlement
11 Administrator and/or the Media Notice Administrator. The Parties shall not
12 unreasonably withhold consent to remove the Class Action Settlement Administrator
13 and/or the Media Notice Administrator, but this shall occur only after Skechers and
14 Class Counsel have attempted to resolve any disputes regarding the retention or
15 dismissal of the Class Action Settlement Administrator and/or the Media Notice
16 Administrator in good faith, and, if they are unable to do so, after the matter has been
17 referred to the Court for resolution.

18 **5.** The Class Action Settlement Administrator and/or the Media
19 Notice Administrator may retain one or more persons to assist in the completion of his
20 or her responsibilities.

21 **6.** Not later than ten (10) days before the date of the Fairness
22 Hearing, the Class Action Settlement Administrator shall file with the Court a list of
23 persons who have opted out or excluded themselves from the Settlement.

24 **7.** Notwithstanding anything else contained in this Agreement, if at
25 least 10,000 Class Members opt out of the Class, Skechers shall have the right, but not
26 the obligation, at any time prior to the Fairness Hearing and at its sole discretion, to
27 notify Plaintiff's Counsel of its election to terminate this Agreement.
28

1 **8.** Not later than forty-five (45) days before the date of the Fairness
2 Hearing, the Media Notice Administrator or the Class Action Settlement Administrator
3 shall file with the Court the details outlining the scope, methods and results of the
4 notice program.

5 **9.** The Class Action Settlement Administrator shall promptly after
6 receipt provide copies of any requests for exclusion, objections, and/or related
7 correspondence to Class Counsel and Skechers' Counsel.

8 **10.** Within (30) days of the completion of distribution of all payments
9 to Class Members by the Class Action Settlement Administrator, the Class Action
10 Settlement Administrator shall provide to Skechers or to such other persons as
11 Skechers may direct, an electronically searchable alphabetical list of consumers who
12 reside in each state who have made claims out of the proposed restitution fund, their
13 contact information, and the amount paid to each consumer.

14 **B.** Class Notice

15 **1.** Dissemination of the Mailed Class Notice

16 a. Beginning not later than 30 calendar days after entry of the
17 Preliminary Approval Order and to be substantially completed not later than 90
18 calendar days before the Fairness Hearing, and subject to the requirements of the
19 Preliminary Approval Order and this Agreement, the Class Action Settlement
20 Administrator shall send the Class Notice by First-Class U.S. Mail, proper postage
21 prepaid, to: (i) each reasonably identifiable Class Member's last known address
22 reasonably obtainable from Skechers, which addressees shall be provided to the Class
23 Action Settlement Administrator by Skechers no later than five (5) business days after
24 entry of the Preliminary Approval Order, subject to the existence of such information
25 and its current possession, if at all, by Skechers; and (ii) each appropriate State and
26 Federal official, as specified in 28 U.S.C. § 1715. The Class Notice shall otherwise
27 comply with Fed. R. Civ. P. 23 and any other applicable statute, law, or rule, including,
28 but not limited to, the Due Process Clause of the United States Constitution.

b. The Class Action Settlement Administrator shall: (a) re-mail any notices returned by the United States Postal Service with a forwarding address that are received by the Class Action Settlement Administrator at least forty-five (45) days before the Fairness Hearing; (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail copies of the Class Notice to the better addresses so found.

2. Contents of the Class Notice: The Claim Form and the Class Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibits 1 and 2, respectively, and shall advise Class Members of the following:

a. General Terms: The Class Notice shall contain a plain, neutral, and objective and concise description of the nature of the Action and the proposed Settlement.

b. Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to opt out of the Settlement. The Class Notice shall provide the deadlines and procedures for exercising this right.

c. Objection to Settlement: The Class Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

d. Fees and Expenses: The Class Notice shall inform Class Members about the amounts being sought by Plaintiffs' Counsel as Attorneys' Fees and Expenses and individual awards to the Plaintiffs, and shall explain that Skechers will pay the fees and expenses awarded to Plaintiffs' Counsel and individual awards to the Plaintiffs in addition to amounts being made available for relief to Class Members and without reducing such relief amounts.

1 e. Consumer Information: The Class Notice shall inform the
 2 Class Members that any information they provide may be submitted to a federal or state
 3 agency in the administration of this relief.

4 f. Claim Form: The Class Notice shall include the Claim
 5 Form, which shall inform the Class Member that he or she must complete and timely
 6 return the Claim Form to be eligible to obtain relief pursuant to this Agreement. The
 7 Claim Form shall inform the Class Members that any information they provide may be
 8 submitted to a federal or state agency in the administration of this relief.

9 C. The Summary Settlement Notice: Beginning not later than thirty (30)
 10 days after entry of the Preliminary Approval Order and to be completed not later than
 11 sixty (60) days thereafter, the Media Notice Administrator shall publish the Summary
 12 Settlement Notice as described in the Media and Notice Plan and in such additional
 13 newspapers, magazines and/or other media outlets as shall be agreed upon by the
 14 Parties. The form of Summary Settlement Notice agreed upon by the Parties is in the
 15 form substantially similar to the one attached to this Agreement as Exhibit 6. The
 16 Class Action Settlement Administrator shall begin accepting Claim Forms as they are
 17 submitted by Class Members for processing, which shall begin no later than six (6)
 18 months after entry of the Preliminary Approval Order.

19 D. Internet Website: The Class Action Settlement Administrator shall
 20 establish an Internet website, www.skecherssettlement.com, which will inform Class
 21 Members of the terms of this Agreement, their rights, dates and deadlines and related
 22 information. The website shall include, in .pdf format, materials agreed upon by the
 23 Parties and/or required by the Court, and will be operational and live by the date of the
 24 first publication of the Summary Settlement Notice or mailing of the Class Notice,
 25 whichever is earlier.

26 E. Toll-Free Telephone Number: The Class Action Settlement
 27 Administrator shall establish a toll-free telephone number that will provide Settlement-
 28 related information to Class Members. This toll-free telephone number will be

1 operational by the date of the first publication of the Summary Settlement Notice or
2 mailing of the Class Notice, whichever is earlier.

3
4 **VI. REQUESTS FOR EXCLUSION**

5 **A.** Any Class Member who wishes to be excluded from the Class must
6 mail a written request for exclusion to the Media Notice Administrator at the address
7 provided in the Class Notice, postmarked no later than thirty (30) days before the
8 Fairness Hearing (if the Fairness Hearing is continued, the deadline runs from the first-
9 scheduled Fairness Hearing), or as the Court otherwise may direct, and specifying that
10 he or she wants to be excluded. The Class Action Settlement Administrator shall
11 forward copies of any written requests for exclusion to Class Counsel and Skechers'
12 Counsel. The Class Action Settlement Administrator shall file a list reflecting all
13 timely requests for exclusion with the Court no later than ten (10) days before the
14 Fairness Hearing.

15 **B.** Any potential Class Member who does not file a timely written request
16 for exclusion as provided in the preceding Section VI.A shall be bound by all
17 subsequent proceedings, orders, and judgments in the Action, including, but not limited
18 to, the Release, even if he or she has litigation pending or subsequently initiates
19 litigation against Skechers relating to the claims and transactions released in the
20 Action. Skechers' Counsel shall provide to the Class Action Settlement Administrator,
21 within ten (10) business days of the entry of the Preliminary Approval Order, a list of
22 all counsel for anyone who has litigation against Skechers that involves the Eligible
23 Shoes. The Class Action Settlement Administrator shall mail copies of the Class
24 Notice to all such legal counsel. Skechers will promptly direct this administrator to
25 serve the Class Notice on counsel for any Class Members who subsequently initiate
26 litigation, arbitration, or other proceedings against Skechers relating to claims alleging
27 events occurring during the Class Period, the Eligible Shoes, and/or otherwise
28 involving the Release.

1 **VII. OBJECTIONS TO SETTLEMENT**

2 **A.** Any Class Member who has not filed a timely written request for
 3 exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this
 4 Agreement or the proposed Settlement, or to the award of Attorneys' Fees and
 5 Expenses, or the individual awards to Plaintiffs, must deliver to the Class Counsel
 6 identified in the Class Notice and to Skechers' Counsel, and file with the Court, no
 7 later than thirty (30) days before the Fairness Hearing (if the Fairness Hearing is
 8 continued, the deadline runs from the first-scheduled Fairness Hearing), or as the Court
 9 otherwise may direct: (a) a written statement of the objections, as well as the specific
 10 reason(s), if any, for each objection, including all legal and factual support the Class
 11 Member wishes to bring to the Court's attention; (b) any evidence or other information
 12 the Class Member wishes to introduce in support of the objections; (c) a statement of
 13 whether the Class Member intends to appear and argue at the Fairness Hearing; and (d)
 14 a list of the Class Member's purchase(s) of Eligible Shoes. Class Members may do so
 15 either on their own or through an attorney retained at their own expense. The objection
 16 must include proof of purchase of Eligible Shoes and the Class Member's home
 17 address. Acceptable proof of purchase includes an itemized cash register receipt, a
 18 credit card receipt or a credit card statement that sufficiently indicates the purchase of
 19 the Eligible Shoes.

20 **B.** Any Class Member who files and serves a written objection, as
 21 described in the preceding Section VII.A, may appear at the Fairness Hearing, either in
 22 person or through personal counsel hired at the Class Member's expense, to object to
 23 the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement,
 24 or to the award of Attorneys' Fees and Expenses or awards to the individual Plaintiffs.
 25 Class Members or their attorneys who intend to make an appearance at the Fairness
 26 Hearing must deliver a notice of intention to appear to one of the Class Counsel
 27 identified in the Class Notice and to Skechers' Counsel, and file said notice with the
 28 Court, no later than thirty (30) days before the Fairness Hearing (if the Fairness

1 Hearing is continued, the deadline runs from the first-scheduled Fairness Hearing), or
2 as the Court may otherwise direct.

3 **C.** Any Class Member who fails to comply with the provisions of Sections
4 VII.A and VII.B above shall waive and forfeit any and all rights he or she may have to
5 appear separately and/or to object, and shall be bound by all the terms of this
6 Agreement and by all proceedings, orders and judgments, including, but not limited to,
7 the Release, in the Actions.

8 **D.** Any Class Member who objects to the Settlement shall be entitled to all
9 of the benefits of the Settlement if this Agreement and the terms contained therein are
10 approved, as long as the objecting Class Member complies with all requirements of this
11 Agreement applicable to Class Members, including the timely submission of valid
12 Claim Forms and other requirements discussed herein.

13 **VIII. RELEASE AND WAIVER**

14 **A.** The Parties agree to the following release and waiver, which shall take
15 effect upon the Final Settlement Date.

16 **B.** In consideration for the Settlement benefits described in this
17 Agreement, Plaintiffs and the other members of the Class, on behalf of themselves,
18 their heirs, guardians, assigns, executors, administrators, predecessors, and/or
19 successors, will fully, finally and forever release, relinquish, acquit, and discharge the
20 Released Parties from, and shall not now or hereafter institute, maintain, or assert on
21 their own behalf, on behalf of the Class or on behalf of any other person or entity, any
22 and all manner of claims, actions, causes of action, suits, rights, debts, sums of money,
23 payments, obligations, reckonings, contracts, agreements, executions, promises,
24 damages, liens, judgments and demands of whatever kind, type or nature whatsoever,
25 both at law and in equity, whether past, present or future, mature or not yet mature,
26 known or unknown, suspected or unsuspected, contingent or non-contingent, whether
27 based on federal, state or local law, statute, ordinance, regulation, code, contract,
28

common law, or any other source, or any claim that Plaintiff Grabowski or Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Parties that were or reasonably could have been alleged in the Action or in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from or in any way whatsoever relating to claims that were or reasonably could have been alleged in the Action, including, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to (1) the claims alleged in the Action, (2) any communications, disclosures, nondisclosures, representations, statements, claims, omissions, warnings, messaging, design, testing, marketing, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, sale and/or resale by the Released Parties of the Eligible Shoes; (3) any claims for rescission, restitution or unjust enrichment for all damages of any kind; (4) violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes; (5) any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes; or (6) damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs.

C. Notwithstanding the language in this section and/or this Agreement, the members of the Class, other than Plaintiffs, are not releasing any claims of or relating to personal injury.

D. Plaintiff Grabowski represents and warrants that she is the sole and exclusive owner of all claims that she personally is releasing under this Agreement.

1 Plaintiff Grabowski further acknowledges that she has not assigned, pledged, or in any
2 manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest
3 or claim arising out of or in any way whatsoever pertaining to the Action, and that
4 Plaintiff Grabowski is not aware of anyone other than herself claiming any interest, in
5 whole or in part, in the Action or in any benefits, proceeds or values under the Action
6 on her behalf.

7 **E.** Without in any way limiting its scope, and, except to the extent otherwise
8 specified in this Agreement, this Release covers by example and without limitation, any
9 and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or
10 litigation fees, costs or any other fees, costs, and/or disbursements incurred by
11 Plaintiffs' Counsel, or by Plaintiff Grabowski or the Class Members for which the
12 Released Parties may be liable.

13 **F.** Plaintiff Grabowski expressly understands and acknowledges, and all
14 Class Members will be deemed by the Final Order and Final Judgment to acknowledge,
15 that certain principles of law, including, but not limited to, **Section 1542 of the Civil**
16 **Code of the State of California, provide that "a general release does not extend to**
17 **claims which the creditor does not know or suspect to exist in his or her favor at**
18 **the time of executing the release, which if known by him or her must have**
19 **materially affected his or her settlement with the debtor."** To the extent that
20 anyone might argue that these principles of law are applicable, Plaintiff Grabowski
21 hereby agrees that the provisions of all such principles of law or similar federal or state
22 laws, rights, rules, or legal principles, to the extent they are found to be applicable
23 herein, are hereby knowingly and voluntarily waived, relinquished and released by
24 Plaintiff Grabowski and all Class Members.

25 **G.** The Parties shall be deemed to have agreed that the Release set forth
26 herein will be and may be raised as a complete defense to and will preclude any action
27 or proceeding based on the claims released by and through this Agreement.
28

1 **H.** Nothing in this Release shall preclude any action to enforce the terms of
2 this Agreement, including participation in any of the processes detailed therein.

3 **I.** Plaintiff Grabowski and Defendant hereby agree and acknowledge that
4 the provisions of this Release together constitute an essential and material term of this
5 Agreement and shall be included in any Final Order and Final Judgment entered by the
6 Court.

7
8 **IX. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL PLAINTIFF**
9 **AWARDS**

10 **A.** Subject to the provisions of this Section (Section IX of the Agreement),
11 on behalf of Plaintiffs' Counsel, Class Counsel agrees to make, and Skechers agrees
12 not to oppose, an application for an award of Attorneys' Fees and Expenses that will
13 not exceed \$5 million in attorneys' fees and expenses. Class Counsel, in their sole
14 discretion, shall allocate and distribute this award of Attorneys' Fees and Expenses
15 among Plaintiffs' Counsel, subject to the provisions of Section IX.C. below.

16 **B.** As of the date of execution of this Agreement, there remain pending six
17 (6) additional putative class actions ("Later-Filed Actions") in various state and
18 federal courts that are duplicative of the Action. The Later-Filed Actions allege,
19 among other claims, violations of state consumer fraud, consumer protection, or
20 deceptive, unlawful and/or unfair business and/or trade practices statutes against
21 Skechers concerning some or all of the Eligible Shoes: *Stalker v. Skechers U.S.A.,*
22 *Inc.*, No. CV 10-05460 JAK (JEMx) (C.D. Cal. filed July 2, 2010); *Tomlinson v.*
23 *Skechers U.S.A., Inc.*, No. CV 2011-121-7 (Ark. Cir. Ct. filed Jan. 13, 2011); *Lovston*
24 *v. Skechers U.S.A., Inc.*, No. 4:11-CV-0460 DPM (Ark. Cir. Ct. filed May 13, 2011);
25 *Hochberg v. Skechers U.S.A. Inc.*, No. CV11-5751 (E.D.N.Y. filed Nov. 23, 2011);
26 *Loss v. Skechers U.S.A., Inc.*, No. 3:12-cv-78-H (W.D. Ky. filed Feb. 10, 2012); and
27 *Boatright v. Skechers U.S.A., Inc.*, No. 3:12-CV-00087-CRS (W.D. Ky. filed Feb. 15,
28 2012). Skechers, Plaintiffs' Counsel, and the Federal Trade Commission

1 acknowledge and agree that the Later-Filed Actions did not in any way contribute to
2 the resolution of the Action, generally, or this settlement, specifically.

3 **C.** Nonetheless, solely to bring about the dismissal of the Later-Filed
4 Actions and not because any of these actions contributed in any way to the resolution
5 of this matter, Class Counsel, without obligation to counsel for plaintiffs in any of the
6 Later-Filed Actions, shall use reasonable efforts to seek prompt and final resolution
7 of the Later-Filed Actions. To effectuate the resolution of the Later-Filed Actions,
8 Class Counsel is authorized to pay a portion of the Attorneys' Fees and Expenses
9 awarded by the Court pursuant to Section IX.A. to the counsel for the plaintiff in any
10 Later-Filed Action that is dismissed with prejudice within forty-five (45) days after
11 the date of entry of the Preliminary Approval Order in this Action. The amount of
12 any such payment shall be determined by Class Counsel in their sole discretion,
13 including pursuant to any agreement reached between Class Counsel and counsel for
14 plaintiffs in the Later-Filed Actions. If any further putative class actions are brought
15 that assert claims similar to those in the Action, counsel for plaintiffs in such further
16 putative class actions shall not be entitled to any portion of the Attorneys' Fees and
17 Expenses awarded by the Court.

18 **D.** Neither the Class, Plaintiffs' Counsel, nor Skechers shall be obligated
19 to pay any attorneys' fees or expenses pursuant to this Agreement in connection with
20 any Later-Filed Action that is not dismissed with prejudice within forty-five (45) days
21 after the date of entry of the Preliminary Approval Order.

22 **E.** The denial, downward modification, or failure to grant the request for
23 Attorneys' Fees and Expenses shall not constitute grounds for modification or
24 termination of this Agreement or the settlement proposed herein.

25 **F.** The amounts awarded by the Court in Attorneys' Fees and Expenses
26 shall be the sole aggregate compensation paid by Skechers for Plaintiffs' Counsel
27 representing the Class and for any counsel for plaintiffs in any Later-Filed Actions.
28 Skechers shall not be liable for or obligated to pay any fees, expenses, costs, or

1 disbursements to, or incur any expense on behalf of, any person or entity, either
 2 directly or indirectly, in connection with this Action or any Later-Filed Actions, other
 3 than the amount or amounts expressly provided for in this Agreement or by
 4 agreement of the Parties.

5 **G.** Skechers shall make an initial payment to Class Counsel of seven-
 6 tenths (7/10) of the amount of Attorneys' Fees and Expenses awarded by the Court
 7 ("Initial Payment"), up to a maximum of \$3.5 million, within ten (10) calendar days
 8 after entry of the Court's order so awarding Attorneys' Fees and Expenses. If the
 9 Final Order and Final Judgment (or the order awarding Attorneys' Fees and
 10 Expenses) is reversed, vacated, modified, and/or remanded for further proceedings or
 11 otherwise disposed of in any manner other than one resulting in an affirmance, then
 12 Plaintiffs' Counsel (or, as applicable, any and all successor(s) or assigns of their
 13 respective firms) shall, within ten (10) calendar days of such event, (i) repay to
 14 Skechers, as applicable, the full amount of the Initial Payment paid to them, or (ii)
 15 repay to Skechers the amount by which the award of Attorneys' Fees and Expenses
 16 has been reduced. Plaintiffs' Counsel's firms (or, as applicable, any and all
 17 successor(s) or assigns of their respective firms) shall be jointly and severally liable
 18 for repayment to Skechers of the Initial Payment, and each firm shall execute a
 19 guarantee of repayment concurrently with this Agreement.

20 **H.** Skechers shall make a final payment of the remaining three-tenths
 21 (3/10) of the Attorneys' Fees and Expenses awarded by the Court ("Final Payment"),
 22 up to a maximum of \$1.5 million, to Class Counsel within ten (10) days after the
 23 Final Settlement Date. Any payment to counsel for plaintiffs in a Later-Filed Action
 24 shall be paid by Class Counsel within thirty (30) days after the Final Settlement Date.

25 **I.** Class Counsel may petition the Court for incentive awards of up to
 26 \$2,500 for Plaintiff Grabowski and \$2,500 for Plaintiff Morga. The purpose of such
 27 awards shall be to compensate Plaintiff Grabowski and Plaintiff Morga for efforts and
 28 risks taken by them on behalf of the Class. Skechers shall pay any incentive awards

made by the Court within thirty (30) days after the occurrence of the Final Settlement Date in accordance with the instructions provided by Class Counsel.

X. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. The Parties shall file with the Court, within fifteen (15) days after the execution of this Agreement, a motion for preliminary approval seeking entry of the Preliminary Approval Order. The Preliminary Approval Order will be in the form of and containing content substantially similar to Exhibit 5.

B. At the hearing on the motion for preliminary approval, the Parties shall ask the Court to set a date for the Fairness Hearing no earlier than 150 days after the Court grants the Preliminary Approval Order,

C. Not later than forty-five (45) days before the Fairness Hearing, the Parties shall file a motion and all supporting papers seeking a Final Order and Final Judgment in the forms substantially similar to and containing content substantially similar to Exhibits 3 and 4, respectively.

XI. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under this Agreement.

B. This Agreement shall terminate at the discretion of either Skechers or Plaintiff Grabowski, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Agreement that the

1 terminating party in its or her sole judgment and discretion reasonably determines is
 2 material, including, without limitation, the terms of relief, the findings, or conclusions
 3 of the Court, the provisions relating to notice, the definition of the Class, and/or the
 4 terms of the Release; or (2) the Court, or any appellate court(s), does not enter or
 5 completely affirm, or alters or expands, any portion of the Final Order and Judgment,
 6 or any of the Court's findings of fact or conclusions of law, that the terminating party
 7 in its or her sole judgment and discretion reasonably determines is material. The
 8 terminating party must exercise the option to withdraw from and terminate this
 9 Agreement, as provided in this Section XI, by a signed writing served on the other
 10 Parties no later than 20 days after receiving notice of the event prompting the
 11 termination. In the event that a terminating party exercises its option to withdraw from
 12 and terminate this Agreement, this Agreement and the Settlement proposed herein shall
 13 become null and void and the Parties will be returned to their respective positions
 14 existing immediately before the execution of this Agreement.

15 **C.** If an option to withdraw from and terminate this Agreement arises
 16 under Section XI.B above, neither Skechers nor Plaintiff Grabowski is required for any
 17 reason or under any circumstance to exercise that option and any exercise of that option
 18 shall be in good faith.

19 **D.** If this Agreement is terminated pursuant to Section XI.B, above, then:

20 **1.** this Agreement shall be null and void and shall have no force or
 21 effect, and no party to this Agreement shall be bound by any of its terms, except for the
 22 terms of Sections XI.D herein;

23 **2.** the Parties will petition to have any stay orders entered pursuant to
 24 this Agreement lifted;

25 **3.** all of its provisions, and all negotiations, statements, and
 26 proceedings relating to it shall be without prejudice to the rights of Skechers, Plaintiff
 27 Grabowski or any Class Member, all of whom shall be restored to their respective
 28 positions existing immediately before the execution of this Agreement, except that the

1 Parties shall cooperate in requesting that the Court set a new scheduling order such that
 2 neither party's substantive or procedural rights is prejudiced by the attempted
 3 Settlement;

4 **4.** the Released Parties, as defined in Section II above, expressly and
 5 affirmatively reserve all defenses, arguments, and motions as to all claims that have
 6 been or might later be asserted in the Action, including, without limitation, the
 7 argument that the Action may not be litigated as a class action;

8 **5.** Plaintiff Grabowski and all other Class Members, on behalf of
 9 themselves and their heirs, assigns, executors, administrators, predecessors, and
 10 successors, expressly and affirmatively reserve and do not waive any motions as to, and
 11 arguments in support of, all claims, causes of actions or remedies that have been or
 12 might later be asserted in the Action including, without limitation, any argument
 13 concerning class certification, consumer fraud, and damages;

14 **6.** this Agreement, the fact of its having been made, the negotiations
 15 leading to it, any discovery or action taken by a party or Class Member pursuant to this
 16 Agreement, or any documents or communications pertaining to this Agreement shall
 17 not be admissible or entered into evidence for any purpose whatsoever in the Action or
 18 in any other proceeding, other than to enforce the terms of this Agreement;

19 **7.** the parties stipulate that any Settlement-related order(s) or
 20 judgment(s) entered in this Action after the date of execution of this Agreement shall
 21 be deemed vacated and shall be without any force or effect;

22 **8.** all costs incurred in connection with the Settlement, including, but
 23 not limited to, notice, publication, and customer communications, (excluding Plaintiffs'
 24 Counsel's costs and expenses incurred in connection with the litigation of the Action)
 25 will be paid from the Escrowed Funds. Neither Plaintiff Grabowski nor Class Counsel
 26 shall be responsible for any of these costs or other Settlement-related costs; and

27 **9.** notwithstanding the terms of this paragraph, if the Settlement is
 28 not consummated, Plaintiffs' Counsel may include any time spent in settlement efforts

1 as part of any statutory fee petition filed at the conclusion of the case, and Skechers
2 reserves the right to object to the reasonableness of such requested fees.

3
4 **XII. GENERAL MATTERS AND RESERVATIONS**

5 **A.** The obligation of the Parties to conclude the proposed Settlement is and
6 shall be contingent upon entry by the Court of the Final Order and Final Judgment
7 approving the Settlement, from which the time to appeal has expired or which has
8 remained unmodified after any appeal(s).

9 **B.** This Agreement reflects, among other things, the compromise and
10 settlement of disputed claims among the Parties hereto, and neither this Agreement nor
11 the releases given herein, nor any consideration therefor, nor any actions taken to carry
12 out this Agreement are intended to be, nor may they be deemed or construed to be, an
13 admission or concession of liability, or the validity of any claim, or defense, or of any
14 point of fact or law (including but not limited to matters respecting class certification)
15 on the part of any party. Skechers expressly denies the allegations of the Plaintiffs'
16 complaints. Neither this Agreement, nor the fact of settlement, nor the settlement
17 proceedings, nor settlement negotiations, nor any related document, shall be used as an
18 admission of any fault or omission by Skechers, or be offered or received in evidence
19 as an admission, concession, presumption, or inference of any wrongdoing by Skechers
20 in any proceeding, other than such proceedings as may be necessary to consummate,
21 interpret, or enforce this Agreement.

22 **C.** The Parties and their counsel agree to keep the existence and contents of
23 this Agreement confidential until the date on which the Agreement is filed with the
24 Court, provided, however, that this section shall not prevent Skechers from disclosing
25 such information, prior to the date on which the Agreement is filed, to state and federal
26 agencies, independent accountants, actuaries, advisors, financial analysts, insurers or
27 attorneys, nor shall it prevent the Parties and their counsel from disclosing such
28 information to persons or entities (such as experts, courts, co-counsel, and/or

1 administrators) to whom the Parties agree disclosure must be made in order to
2 effectuate the terms and conditions of this Agreement; provided further, that Skechers
3 may disclose publicly the terms of the Agreement that it deems necessary to meet its
4 regulatory obligations or fiduciary duties.

5 **D.** Plaintiff Grabowski and Plaintiffs' Counsel agree that the confidential
6 information made available to them solely through the settlement process was made
7 available, as agreed to, on the condition that neither Plaintiff Grabowski nor her
8 counsel may disclose it to third parties (other than experts or consultants retained by
9 Plaintiff Grabowski in connection with this case); that it not be the subject of public
10 comment; that it not be used by Plaintiff Grabowski or Plaintiffs' Counsel in any way
11 in this litigation should the Settlement not be achieved, and that it is to be returned if a
12 Settlement is not concluded; provided, however, that nothing contained herein shall
13 prohibit Plaintiff Grabowski from seeking such information through formal discovery if
14 not previously requested through formal discovery or from referring to the existence of
15 such information in connection with the Settlement of this litigation.

16 **E.** All information marked as "Confidential" provided by Skechers to
17 Plaintiffs, Plaintiffs' Counsel, any individual Class Member, counsel for any individual
18 Class Member, and/or administrators, pursuant to the implementation of this
19 Agreements, constitutes trade secrets and highly confidential and proprietary business
20 information and shall be deemed "Confidential," pursuant to the protective order that
21 will be entered in the Action, and shall be the subject to all the provisions thereof. Any
22 materials inadvertently produced shall, upon Skechers' request, be promptly returned to
23 Skechers' Counsel, and there shall be no implied or express waiver of any privilege,
24 right and defense.

25 **F.** Within one hundred and eighty (180) days after the Final Settlement Date
26 (unless the time is extended by agreement of the Parties), Plaintiffs' Counsel, and any
27 expert or other consultant employed by them in such capacity or any other individual
28 with access to documents provided by Skechers to Plaintiffs' Counsel, shall either: (i)

1 return to Skechers' Counsel, all such documents and materials (and all copies of which
 2 documents in whatever form made or maintained) produced by Skechers in the Action
 3 and any and all handwritten notes summarizing, describing, or referring to such
 4 documents; or (ii) certify to Skechers' Counsel that all such documents and materials
 5 (and all copies of such documents in whatever form made or maintained) produced by
 6 Skechers in the Action any and all handwritten notes summarizing, describing, or
 7 referring to such documents have been destroyed, provided, however, that this section
 8 shall not apply to any documents made part of the record in connection with a Claim,
 9 nor to any documents made part of a Court filing, nor to Plaintiffs' Counsel's work
 10 product. Skechers' Counsel agrees to hold all documents returned by Plaintiffs'
 11 Counsel, and any expert or other consultant or any other individual employed by
 12 Plaintiffs' Counsel in such capacity with access to documents provided by Skechers
 13 until one year after the distribution of the Escrowed Funds to Class Members who
 14 submitted valid Claim Forms. One (1) year after the distribution of the Escrowed
 15 Funds to Class Members who submitted acceptable Claim Forms, the Class Action
 16 Settlement Administrator shall return all documents and materials to Skechers and/or
 17 Class Counsel that produced the documents and materials, except that it shall destroy
 18 any and all Claim Forms, including any and all information and/or documentation
 19 submitted by Class Members.

20 **G.** Skechers' execution of this Agreement shall not be construed to release
 21 — and Skechers expressly does not intend to release — any claim Skechers may have
 22 or make against any insurer for any cost or expense incurred in connection with this
 23 Settlement, including, without limitation, for attorneys' fees and costs.

24 **H.** Class Counsel represent that: (1) they are authorized by Plaintiff
 25 Grabowski to enter into this Agreement on behalf of Plaintiff Grabowski, their
 26 respective present or past law firms and any other attorneys who have represented or
 27 who now represent Plaintiff Grabowski in this Action with respect to the claims in this
 28 Action; and (2) they are seeking to protect the interests of the Class.

1 **I.** Plaintiff Grabowski represents and certifies that: (1) she has agreed to
2 serve as representative of the Class; (2) she is willing, able, and ready to perform all of
3 the duties and obligations of representatives of the Class; (3) she has read the operative
4 complaint, or has had the contents of such pleadings described to her; (4) she is familiar
5 with the results of the fact-finding undertaken by Class Counsel; (5) she has read this
6 Agreement or has received a detailed description of it from Class Counsel and she has
7 agreed to its terms; (6) she has consulted with Class Counsel about the Action and this
8 Agreement and the obligations imposed on representatives of the Class; and (7) she has
9 authorized Class Counsel to execute this Agreement on her behalf; and (8) she shall
10 remain and serve as representative of the Class until the terms of the Agreement are
11 effectuated, this Agreement is terminated in accordance with its terms, or the Court at
12 any time determines that said Plaintiff cannot represent the Class.

13 **J.** Skechers represents and warrants that the individual(s) executing this
14 Agreement is authorized to enter into this Agreement on behalf of Skechers.

15 **K.** This Agreement, complete with its exhibits, sets forth the sole and entire
16 agreement among the Parties with respect to its subject matter, and it may not be
17 altered, amended, or modified except by written instrument executed by Class Counsel
18 and Skechers' Counsel. The Parties expressly acknowledge that no other agreements,
19 arrangements, or understandings not expressed in this Agreement exist among or
20 between them and that in deciding to enter into this Agreement, they rely solely upon
21 their judgment and knowledge. This Agreement supersedes any prior agreements,
22 understandings, or undertakings (written or oral) by and between the Parties regarding
23 the subject matter of this Agreement.

24 **L.** This Agreement and any amendments thereto shall be governed by and
25 interpreted according to the law of the State of California, notwithstanding its conflict
26 of laws provisions.

27 **M.** Any disagreement and/or action to enforce this Agreement shall be
28 commenced and maintained only in the Court in which this Action is pending.

N. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Legal Holidays) express delivery service as follows:

1. If to Skechers, then to:

Daniel M. Petrocelli
 Jeffrey A. Barker
 O'Melveny & Myers LLP
 1999 Avenue of the Stars, 7th Floor
 Los Angeles, California 90067
 Tel. 310-553-6700
 Fax. 310-246-6779
 Email: dpetrocelli@omm.com
 jrbarker@omm.com

Jon Kardassakis
 Lewis Brisbois Bisgaard & Smith LLP
 221 North Figueroa Street, Suite 1200
 Los Angeles, CA 90012
 Tel. 213-250-1800
 Fax. 213-250-7900
 Email: kardassakis@lbbslaw.com

2. If to Plaintiff Grabowski, then to:

Timothy G. Blood
 Blood Hurst & O'Reardon LLP
 701 B Street, Suite 1700
 San Diego, California 92101
 Tel. 619-338-1100
 Fax. 619-338-1101
 Email: tblood@bholaw.com

Janine L. Pollack
 Milberg LLP
 One Penn Plaza
 New York, NY 10119
 Tel. 212-946-9376
 Fax. 212-273-4388
 Email: jpollack@milberg.com

O. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last

1 day of the period so computed shall be included, unless it is a Saturday, a Sunday or a
 2 Legal Holiday (as defined in Fed. R. Civ. P. 6(a)(6)), or, when the act to be done is the
 3 filing of a paper in court, a day on which weather or other conditions have made the
 4 office of the clerk of the court inaccessible, in which event the period shall run until the
 5 end of the next day that is not one of the aforementioned days.

6 **P.** The Parties reserve the right, subject to the Court's approval, to agree to
 7 any reasonable extensions of time that might be necessary to carry out any of the
 8 provisions of this Agreement.

9 **Q.** The Class, Plaintiff Grabowski, Class Counsel, Skechers or Skechers'
 10 Counsel shall not be deemed to be the drafter of this Agreement or of any particular
 11 provision, nor shall they argue that any particular provision should be construed against
 12 its drafter or otherwise resort to the *contra proferentem* canon of construction. All
 13 Parties agree that this Agreement was drafted by counsel for the Parties during
 14 extensive arm's length negotiations. No parol or other evidence may be offered to
 15 explain, construe, contradict, or clarify its terms, the intent of the Parties or their
 16 counsel, or the circumstances under which this Agreement was made or executed.

17 **R.** The Parties expressly acknowledge and agree that this Agreement and its
 18 exhibits, along with all related drafts, motions, pleadings, conversations, negotiations,
 19 and correspondence, constitute an offer of compromise and a compromise within the
 20 meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any
 21 state. In no event shall this Agreement, any of its provisions or any negotiations,
 22 statements or court proceedings relating to its provisions in any way be construed as,
 23 offered as, received as, used as, or deemed to be evidence of any kind in the Action,
 24 any other action, or in any judicial, administrative, regulatory or other proceeding,
 25 except in a proceeding to enforce this Agreement or the rights of the Parties or their
 26 counsel. Without limiting the foregoing, neither this Agreement nor any related
 27 negotiations, statements, or court proceedings shall be construed as, offered as,
 28 received as, used as or deemed to be evidence or an admission or concession of any

1 liability or wrongdoing whatsoever on the part of any person or entity, including, but
2 not limited to, the Released Parties, Plaintiff Grabowski, or the Class or as a waiver by
3 the Released Parties, Plaintiff Grabowski or the Class of any applicable privileges,
4 claims or defenses.

5 **S.** Plaintiff Grabowski expressly affirms that the allegations contained in the
6 complaint were made in good faith and have a basis in fact, but considers it desirable
7 for the Action to be settled and dismissed because of the substantial benefits that the
8 proposed Settlement will provide to Class Members.

9 **T.** The Parties, their successors and assigns, and their counsel undertake to
10 implement the terms of this Agreement in good faith, and to use good faith in resolving
11 any disputes that may arise in the implementation of the terms of this Agreement.

12 **U.** The waiver by one party of any breach of this Agreement by another
13 party shall not be deemed a waiver of any prior or subsequent breach of this
14 Agreement.

15 **V.** If one party to this Agreement considers another party to be in breach of
16 its obligations under this Agreement, that party must provide the breaching party with
17 written notice of the alleged breach and provide a reasonable opportunity to cure the
18 breach before taking any action to enforce any rights under this Agreement.

19 **W.** The Parties, their successors and assigns, and their counsel agree to
20 cooperate fully with one another in seeking Court approval of this Agreement and to
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28

BLOOD HURST & O'REARDON, LLP

1 use their best efforts to effect the prompt consummation of this Agreement and the
2 proposed Settlement.

3 **X.** This Agreement may be signed with a facsimile signature and in
4 counterparts, each of which shall constitute a duplicate original.

5 Agreed to on the date indicated below.

6 **APPROVED AND AGREED TO BY THE PLAINTIFFS**

7
8
9 BY  DATE 5-15-12
10 TAMARA GRABOWSKI

11 BY _____ DATE _____
12 VENUS MORGA

13
14
15 **APPROVED AND AGREED TO BY CLASS COUNSEL**

16
17 BY _____ DATE _____
18 TIMOTHY G. BLOOD
19 BLOOD HURST & O'REARDON LLP

20
21 BY _____ DATE _____
22 JANINE L. POLLACK
23 MILBERG LLP

24 **APPROVED AND AGREED TO BY AND ON BEHALF OF**
25 **SKECHERS U.S.A., INC.**

26 BY _____ DATE _____
27 Name:
28 Title:

1 use their best efforts to effect the prompt consummation of this Agreement and the
2 proposed Settlement.

3 **X.** This Agreement may be signed with a facsimile signature and in
4 counterparts, each of which shall constitute a duplicate original.

5 Agreed to on the date indicated below.

6 APPROVED AND AGREED TO BY THE PLAINTIFFS

7
8
9 BY TAMARA GRABOWSKI DATE _____

10
11 BY *Tamara* DATE 05/15/12
12 VENUS MORGA

13
14
15 APPROVED AND AGREED TO BY CLASS COUNSEL

16
17 BY TIMOTHY G. BLOOD DATE _____
18 BLOOD HURST & O'REARDON LLP

19
20
21 BY JANINE L. POLLACK DATE _____
22 MILBERG LLP

23
24 APPROVED AND AGREED TO BY AND ON BEHALF OF
25 SKECHERS U.S.A., INC.

26 BY _____ DATE _____
27 Name:
28 Title:

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4 counterparts, each of which shall constitute a duplicate original.

5 Agreed to on the date indicated below.

6 APPROVED AND AGREED TO BY THE PLAINTIFFS

7
8
9 BY TAMARA GRABOWSKI DATE _____

10
11 BY VENUS MORGA DATE _____

12
13
14
15 APPROVED AND AGREED TO BY CLASS COUNSEL

16
17 BY  DATE May 15, 2012
18 TIMOTHY G. BLOOD
19 BLOOD HURST & O'REARDON LLP

20
21 BY JANINE L. POLLACK DATE _____
22 MILBERG LLP

23
24 APPROVED AND AGREED TO BY AND ON BEHALF OF
25 SKECHERS U.S.A., INC.

26 BY _____ DATE _____
27 Name:
28 Title:

BLOOD HURST & O'REARDON, LLP

use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

X. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

Agreed to on the date indicated below.

APPROVED AND AGREED TO BY THE PLAINTIFFS

BY TAMARA GRABOWSKI DATE _____

BY VENUS MORGA DATE _____

APPROVED AND AGREED TO BY CLASS COUNSEL

BY TIMOTHY G. BLOOD DATE _____
BLOOD HURST & O'REARDON LLP

BY Janine L. Pollack DATE May 15, 2012
JANINE L. POLLACK
MILBERG LLP

APPROVED AND AGREED TO BY AND ON BEHALF OF
SKECHERS U.S.A., INC.

BY _____ DATE _____
Name:
Title:

BLOOD HURST & O'REARDON, LLP

1 use their best efforts to effect the prompt consummation of this Agreement and the
2 proposed Settlement.

3 X. This Agreement may be signed with a facsimile signature and in
4 counterparts, each of which shall constitute a duplicate original.

5
6 Agreed to on the date indicated below.

7 APPROVED AND AGREED TO BY THE PLAINTIFFS

8
9 BY _____ DATE _____
10 TAMARA GRABOWSKI

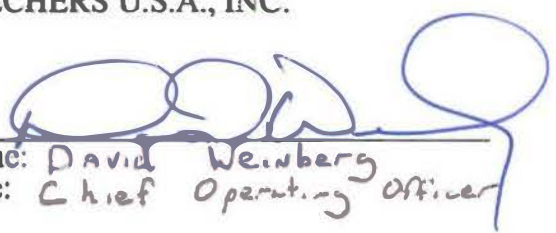
11
12 BY _____ DATE _____
13 VENUS MORGA

14
15 APPROVED AND AGREED TO BY CLASS COUNSEL

16
17 BY _____ DATE _____
18 TIMOTHY G. BLOOD
19 BLOOD HURST & O'REARDON LLP

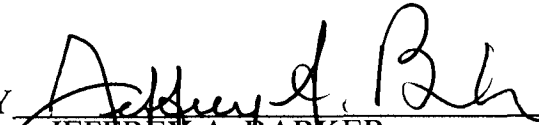
20
21 BY _____ DATE _____
22 JANINE L. POLLACK
23 MILBERG LLP

24 APPROVED AND AGREED TO BY AND ON BEHALF OF
25 SKECHERS U.S.A., INC.

26 BY  DATE May 15, 2012
27 Name: David Weinberg
28 Title: Chief Operating Officer

1 APPROVED AND AGREED TO BY DEFENDANT'S COUNSEL

2
3 BY


JEFFREY A. BARKER
O'MELVENY & MYERS, LLP

DATE

May 15, 2012

BLOOD HURST & O'REARDON, LLP