

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:
SKECHERS TONING SHOE
PRODUCT LIABILITY LITIGATION

Master Case: 3:11-md-02308-TBR

MDL No.: 2308

Judge Thomas B. Russell

This Document Applies to:

DEBBIE HADLEY
37 Severe Street
Grantsville, UT 84

Plaintiff,

Case No. 3:12CV-833-R

V.

SKECHERS, U.S.A., Inc.
228 Manhattan Beach Blvd.,
Manhattan Beach, CA 90266

COMPLAINT WITH
JURY DEMAND

and

SKECHERS, U.S.A., Inc., II
228 Manhattan Beach Blvd.,
Manhattan Beach, CA 90266

and

SKECHERS FITNESS GROUP
228 Manhattan Beach Blvd.,
Manhattan Beach, CA 90266

Defendants.

PARTIES

1. The Plaintiff, Debbie Hadley, is and was at all times relevant hereto, a resident of Tooele County, Utah.

2. The Defendant, Skechers U.S.A., Inc., is a corporation organized and existing under the laws of the state of Delaware, with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in Utah by labeling, marketing, distributing, promoting and selling its products in Utah.

3. The Defendant, Skechers U.S.A., Inc. II, is a corporation organized and existing under the laws of the state of Delaware, with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in Utah by labeling, marketing, distributing, promoting and selling its products in Utah. Skechers U.S.A., Inc., and Skechers U.S.A., Inc. II, will be herein referred to collectively as “Skechers”.

4. Skechers Fitness Group is a trademarked subsidiary of Skechers U.S.A., Inc. II with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in Utah by labeling, marketing, distributing, promoting and selling its products in Utah.

JURISDICTION AND VENUE

5. Subject matter of this action arises under 28 U.S.C. § 1332. The parties are citizens of different states, and the amount in controversy between the parties exceeds the sum of \$75,000.00, exclusive of interest and costs.

6. This Court has personal jurisdiction of the Defendants because the Defendants transact business and the wrongs complained of herein arose in Utah.

7. Venue is proper in this District pursuant to Practice and Procedure Order No. 2 which authorized direct filing of cases into MDL No. 2308 in order to eliminate delays associated with transfer of cases and to promote judicial efficiency. Upon the completion of all pretrial proceedings applicable to this case, pursuant to Practice and Procedure Order No. 2 this case will be transferred to the federal district court in the district where the Plaintiff allegedly was injured by use of Skechers Shape-ups or where the Plaintiff resides at the time of such transfer. But for Practice and Procedure Order No. 2, Plaintiff would have filed her Complaint in the United States District Court for the District of Utah.

FACTUAL BACKGROUND

8. Skechers is a shoe company that manufactures toning shoes, including Skechers Shape-ups and Tone-ups. These shoes have a pronounced rocker bottom sole. Skechers markets and promotes its toning shoes as footwear that will provide countless health benefits including improved cardiac function and orthopedic benefits. It markets and promotes its toning shoes to be worn in place of other athletic shoes during daily activities, exercise routines, and in the workplace. Skechers Shape-ups slogans include: “Shape Up While You Walk” and “Shape Up While You Work.”

9. Skechers intentionally designs its toning shoes to create instability and to change gait mechanics. It is well established in the medical literature, however, that changing one’s gait can and does cause chronic injuries. Such injuries include stress fractures, joint injuries, and tendon and ligament injuries. Moreover, shoes that create instability can and do cause people wearing them to fall. Despite this existing body of literature and numerous complaints to the

company about chronic and traumatic injuries, Skechers has and continues to market and promote this footwear without performing any safety testing.

10. In fact, toning shoes provide no additional health benefits than do regular athletic and walking shoes. The American Council on Exercise (ACE) commissioned an independent study by the University of Wisconsin to determine if toning shoes provide the benefits that they market and promote to the public. Based on those study results, the ACE concluded that: “Across the board, none of the toning shoes showed statistically significant increases in either exercise response or muscle activation during any of the treadmill trials,” ACE says. “There is simply no evidence to support the claims that these shoes will help wearers exercise more intensely, burn more calories or improve muscle strength and tone.”

11. The health risks of Skechers outweigh the absence of any benefit provided to the wearer. Indeed, as of May 2011, Consumer Reports has documented that Skechers has seen more reports of injuries or complaints than any other product in its database. This is not surprising, because by altering gait mechanics and creating instability, Skechers places consumers at increased risk for chronic injuries such as stress fractures and tendon ruptures, as well as acute injuries from falling.

12. Plaintiff Debbie Hadley saw many television and print advertisements touting the benefits of Skechers Shape-Up toning shoes. Relying upon those ads, specifically, the many health benefits of wearing Skechers Shape-ups, Debbie Hadley purchased a pair of Skechers Shape-ups in or about March 2010 from Famous Footwear in West Valley City, Utah.

13. After wearing the shoes for 25-45 minute period for two weeks after purchase, Plaintiff began wearing these shoes during her daily activities in Grantsville, Utah.

14. On December 28, 2010, Debbie Hadley was walking down a step on her back porch. Suddenly and without warning, her Skechers Shape-ups toning shoe pronated inward and caused her right ankle to collapse causing her to fall. Plaintiff presented to Mountain West Medical Center Emergency Room where x-rays demonstrated a chip in her right tibia, a spiral fracture of her left tibia, and a shattered left fibula. Debbie Hadley was also diagnosed with a sprained right ankle.

15. Debbie Hadley's right ankle was placed in a boot which she was required to wear for approximately six weeks.

16. At Mountain West Medical Center, Debbie Hadley came under the care of Dr. Christopher Belton, an orthopedic surgeon, who informed Debbie Hadley that her left tibia required immediate surgery.

17. On December 29, 2010, Plaintiff Debbie Hadley underwent surgery by Dr. Belton at Mountain West Medical Center to place a rod and screws in her left tibia.

18. Following surgery, Debbie Hadley was required to wear a cast on her left leg for seven weeks.

19. Following removal of the cast, Debbie Hadley was required to wear a boot with a bone stimulator for four months.

20. Following the removal of the boot, Debbie Hadley was required to attend physical therapy for two months.

21. Upon information and belief all of Plaintiff's injuries, and the mechanism by which each Plaintiff fell and/or was injured, as set forth in the preceding paragraphs were directly and proximately caused by Plaintiff's use of Skechers Shape-ups.

22. The medical treatment and injuries described above are not necessarily a full and complete description of each Plaintiff's injuries, as Plaintiff may have or did incur further treatment and injuries not specifically set forth herein.

23. Due to her injuries, Plaintiff has incurred significant medical expenses, could incur future medical expenses, and has suffered physical pain and mental anguish. Further, Plaintiff has lost wages as a result of being unable to work and her ability to earn money has been impaired. Additionally, she is at increased risk for future health problems and disability.

24. Unbeknownst to Debbie Hadley, she purchased shoes that provided no additional benefit to her health. Instead, she was lulled into purchasing a dangerous product that the Defendant knew produced a substantial risk of causing chronic injuries and inducing falls because of Skechers' elevated and unstable, rocker-bottom sole. This elevation alters gait mechanics and creates instability. Had Debbie Hadley known that the toning shoe provided no benefit to her health, she would not have purchased or worn the shoes and would not have incurred the injuries or damages she did as a result of her use of the shoes.

**FIRST CAUSE OF ACTION
STRICT PRODUCTS LIABILITY DEFECTIVE MANUFACTURING**

25. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

26. Defendants are the manufacturers, designers, distributors, sellers, and/or suppliers of toning shoes including the Skechers Shape-ups.

27. The Skechers Shape-ups manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Defendants, was defective in its manufacture and construction when it left the hands of Defendants in that it deviated from product specifications posing a serious risk of injury.

28. As a direct and proximate result of Plaintiff's use of Skechers Shape-ups as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm.

29. Additionally, to the extent any claims are made under the laws of the State of Utah, including but not necessarily the claims of Plaintiff, and to the extent this Court finds that Utah statutory law found at Utah Code §§ 78B-6-701 *et seq.* is applicable to this case, Plaintiff asserts and alleges that Skechers Shape-ups are "unreasonably dangerous" under § 78B-6-702; and that at the time Skechers Shape-ups were sold by the Defendants, there was a defect or defective condition in Skechers Shape-ups which made them unreasonably dangerous to the Plaintiff.

30. As a direct and proximate result of the foregoing, Plaintiff is entitled to damages pursuant to the common law and applicable state statutes. Further, Defendants' actions and omissions as identified in this Complaint constitute a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

**SECOND CAUSE OF ACTION
STRICT PRODUCTS LIABILITY DESIGN DEFECT**

31. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

32. Defendants are the manufacturers, designers, distributors, sellers, and/or suppliers of orthopedic devices including Skechers Shape-ups.

33. The Skechers Shape-ups manufactured and supplied by Defendants was defective in design or formulation in that, when it left the hands of the Defendants, the foreseeable risks of the product exceeded the benefits associated with its design or formulation, or it was more

dangerous than an ordinary consumer would expect.

34. The Skechers Shape-ups that the Plaintiff used had not been materially altered or modified prior to their use.

35. The foreseeable risks associated with the design or formulation of Skechers Shape-ups, include, but are not limited to, the fact that the design or formulation of Skechers Shape-ups is more dangerous than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner.

36. As a direct and proximate result of Plaintiff's use of Skechers Shape-ups as manufactured, designed, sold, supplied, marketed and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

37. Additionally, to the extent any claims are made under the laws of the State of Utah, including but not necessarily the claims of Plaintiff, and to the extent this Court finds that Utah statutory law found at Utah Code §§ 78B-6-701 *et seq.* is applicable to this case, Plaintiff asserts and alleges that Skechers Shape-ups are "unreasonably dangerous" under § 78B-6-702; and that at the time Skechers Shape-ups were sold by the Defendants, there was a defect or defective condition in Skechers Shape-ups which made them unreasonably dangerous to the Plaintiff.

38. As a direct and proximate result of the foregoing, Plaintiff is entitled to damages pursuant to the common law and applicable state statutes. Further, Defendants' actions and omissions as identified in this Complaint constitute a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

**THIRD CAUSE OF ACTION
STRICT PRODUCTS LIABILITY – DEFECT DUE TO INADEQUATE WARNING**

39. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

40. The Skechers Shape-ups manufactured and supplied by Defendants were defective due to inadequate warning or instruction because Defendants knew or should have known that the product created significant risks of serious bodily harm to consumers and they failed to adequately warn consumers and/or their health care providers of such risks as follows:

- a. The Defendants knew or, in the exercise of reasonable care, should have known that footwear that is marketed to be worn on a daily basis during physical activity and is designed to alter gait mechanics and create instability presents a risk of chronic or acute injuries; including stress fractures, tendon and ligament damage, and falls;
- b. The Defendants failed to provide the warning or instruction that a manufacturer exercising reasonable care would have provided concerning the risk chronic and acute injuries from gait alteration and instability caused by the shoes, in light of the likelihood that the shoes would cause the harm claimed by the Plaintiff, Debbie Hadley, and in light of the likely seriousness of that harm.

41. The Defendants, as manufacturers of Skechers Shape-ups, are held to the level of knowledge of an expert in the field of that type of shoes, and had a duty to warn its consumers of the dangers associated with the shoes and failed to do so.

42. The Skechers Shape-ups manufactured and supplied by Defendants was defective due to inadequate post-marketing warning or instruction because, after Defendants knew or should have known of the risk of serious bodily harm, as set forth herein, from the use of Skechers Shape-ups, Defendants failed to provide an adequate warning to consumers and/or their

health care providers of the product, knowing the product could cause serious injury as set forth herein.

43. As a direct and proximate result of Plaintiff's use of Skechers Shape-ups as manufactured, designed, sold, supplied, marketed and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

44. Additionally, to the extent any claims are made under the laws of the State of Utah, including but not necessarily the claims of Plaintiff, and to the extent this Court finds that Utah statutory law found at Utah Code §§ 78B-6-701 *et seq.* is applicable to this case, Plaintiff asserts and alleges that Skechers Shape-ups are "unreasonably dangerous" under § 78B-6-702; and that at the time Skechers Shape-ups were sold by the Defendants, there was a defect or defective condition in Skechers Shape-ups which made them unreasonably dangerous to the Plaintiff.

45. As a direct and proximate result of the foregoing, Plaintiff is entitled to damages pursuant to the common law and applicable state. Further, Defendants' actions and omissions as identified in this Complaint constitute a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

**FOURTH CAUSE OF ACTION
STRICT PRODUCTS LIABILITY DUE TO NON CONFORMANCE WITH
REPRESENTATIONS**

46. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

47. Defendants are the manufacturers, designers, distributors, sellers and/or suppliers of toning shoes including the Skechers Shape-ups and made representations regarding the

character or quality of Skechers Shape-ups including but not limited to:

- a. Get in shape without setting foot in a gym;
- b. Designed to promote weight loss, tone muscles, and improve posture;
- c. Tightens abdominal muscles;
- d. Improves blood circulation;
- e. Improves posture;
- f. Strengthens the back;
- g. Firms buttocks muscles;
- h. Tones and firms thigh muscles;
- i. Firms calf muscles;
- j. Increase cardiovascular health;
- k. Reduce stress on knee and ankle joints;
- l. Relieve muscle tension and fatigue;
- m. Forces you to engage muscles not normally used when walking on hard ground;
- n. Reduce impact on your joints and lower back;
- o. Improve your life by changing the way you walk;
- p. Improve stamina and metabolism.

48. The Skechers Shape-ups manufactured and supplied by Defendants was defective in that, when it left the hands of Defendants, it did not conform to representations made by Defendants concerning the product.

49. These material misrepresentations made by the Defendant, Skechers, were false as proved by a study from the University of Wisconsin that was commissioned by the American Council on Exercise.

50. Plaintiff justifiably relied upon Defendants' representations regarding Skechers Shape-ups that they would provide the claimed health benefits if used in the manner directed by the labeling when Plaintiff selected Skechers Shape-ups and wore the shoes regularly during daily activities, including walking and exercising.

51. As a direct and proximate result of Plaintiff's use of the Skechers Shape-ups and her reliance on Defendants' representations regarding the character and quality Skechers Shape-ups, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

52. As a direct and proximate result of the foregoing, Plaintiff is entitled to damages pursuant to the common law and applicable state statutes. Further, Defendants' actions and omissions as identified in this Complaint constitute a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

**FIFTH CAUSE OF ACTION
NEGLIGENCE**

53. Defendants had a duty to exercise reasonable care in the design, manufacture, testing, marketing and distribution into the stream of commerce of Skechers Shape-ups, including a duty to insure that Skechers Shape-ups did not pose a significantly increased risk of injury.

54. Defendants failed to exercise reasonable care in the design, manufacture, testing, marketing and distribution into the stream of commerce of Skechers Shape-ups. Defendants knew or should have known that footwear that is marketed to be worn on a daily basis during physical activity and is designed to alter gait mechanics and create instability presents a risk of chronic or acute injuries; including stress fractures, tendon and ligament damage, and falls therefore giving rise to pain and suffering, debilitation, and the need for

medical treatment including possible surgery and further complications, and therefore was not safe for use by Plaintiff.

55. Despite the fact that Defendants knew or should have known that Skechers Shape-ups could fail early in patients therefore giving rise to pain and suffering, debilitation, and therefore giving rise to pain and suffering, debilitation, and the need for medical treatment including possible surgery and further complications, Defendants continued to market Skechers Shape-ups as a safe and effective toning shoe.

56. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered significant damages, including but not limited to physical injury, pain and suffering and further treatment and will continue to suffer such damages in the future.

57. In taking the actions and omissions that caused these damages, Defendants were guilty of malice, oppression and fraud, and Plaintiff is therefore entitled to recover punitive damages.

**SIXTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY**

58. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

59. Defendants expressly warranted that Skechers Shape-ups were a safe and effective toning shoe.

60. The Skechers Shape-ups manufactured and sold by Defendants did not conform to these express representations because it caused serious injury to Plaintiff when used as recommended and directed.

61. As a direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered harm, damages and economic loss and will continue to suffer such harm, damages and

economic loss in the future.

**SEVENTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY**

62. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

63. At the time Defendants designed, manufactured, marketed, sold, and distributed Skechers Shape-ups for use by Plaintiff, Defendants knew of the use for Skechers Shape-ups were intended and impliedly warranted the product to be of merchantable quality and safe for such use and that its design, manufacture, labeling and marketing were sufficient.

64. Plaintiff reasonably relied upon the skill and judgment of Defendants as to whether Skechers Shape-ups were of merchantable quality and safe for its intended use and upon Defendants' implied warranty as to such matters.

65. Contrary to such implied warranty, Skechers Shape-ups were not of merchantable quality or safe for its intended use, because the product was unreasonably dangerous and defective as described above.

66. As a direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

**EIGHTH CAUSE OF ACTION
NEGLIGENT REPRESENTATION AND FRAUD**

67. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

68. In regard to the Shape-ups footwear purchased and worn by the Plaintiff, the Defendant, Skechers made multiple material representations about the shoes that included:

- a. Get in shape without setting foot in a gym;
- b. Designed to promote weight loss, tone muscles, and improve posture;
- c. Tightens abdominal muscles;
- d. Improves blood circulation;
- e. Improves posture;
- f. Strengthens the back;
- g. Firms buttocks muscles;
- h. Tones and firms thigh muscles;
- i. Firms calf muscles;
- j. Increase cardiovascular health;
- k. Reduce stress on knee and ankle joints;
- l. Relieve muscle tension and fatigue;
- m. Forces you to engage muscles not normally used when walking on hard ground;
- n. Reduce impact on your joints and lower back;
- o. Improve your life by changing the way you walk;
- p. Improve stamina and metabolism.

69. These material representations made by the Defendant, Skechers, were false as proven by a study from the University of Wisconsin that was commissioned by the American Council on Exercise.

70. When the Defendant, Skechers, made these material representations, it knew that they were false, and it made the material representations recklessly without any knowledge of

their truth and a positive assertion. Specifically, many of the representations are not supported by the four “studies” that the Defendant, Skechers, cites as support for the claims, and for those representations that the Defendant bases on the “studies”, those results were misrepresented in order to be construed as supporting these representations.

71. Defendants had actual knowledge based upon studies, published reports and clinical experience that its product, Skechers Shape-ups created an unreasonable risk of serious bodily injury yet Defendants negligently misrepresented to Plaintiff that its toning shoes were safe and met all applicable design and manufacturing requirements.

72. The Defendant, Skechers, made these false, material representations with the intention of inducing buyers, including the Plaintiff, to act by purchasing the Shape-ups footwear by appealing to the buyers’ desire to own athletic footwear that would result in numerous health benefits.

73. Plaintiff acted in justifiable reliance on these material representations made by the Defendant, Skechers, in that she purchased these shoes specifically under the belief that they would provide the claimed health benefits if used in the manner directed by the labeling.

74. As a direct and proximate result of Defendants’ fraudulent and/or negligent actions and omissions, Plaintiff used Skechers Shape-ups and suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

75. Defendants’ actions and omissions as identified in this Complaint demonstrate a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

**NINTH CAUSE OF ACTION
UNJUST ENRICHMENT**

76. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

77. As the intended and expected result of their conscious wrongdoing, Defendants have profited and benefited from the purchase and use of Skechers Shape-ups by Plaintiff.

78. Defendants have voluntarily accepted and retained those profits and benefits, derived from Plaintiff, with full knowledge and awareness that, as a result of Defendants' fraud and other conscious and intentional wrongdoing, Plaintiff was not receiving a product of the quality, nature, or fitness that had been represented by Defendants, or that Plaintiff, as a reasonable consumer, expected to receive.

79. By virtue of the conscious wrongdoing alleged above, Defendants have been unjustly enriched at the expense of Plaintiff, who is entitled in equity, and hereby seek, the disgorgement and restitution of Defendants' wrongful profits, revenues and benefits, to the extent and in the amount deemed appropriate by the Court; and such other relief as the Court deems just and proper to remedy Defendants' unjust enrichment.

**TENTH CAUSE OF ACTION
VIOLATION OF UTAH'S CONSUMER PROTECTION ACTS**

80. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

81. Defendants have a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, development, manufacture, promotion, and sale of Skechers Shape-ups.

82. Had the Defendants not engaged in the deceptive conduct described herein, Plaintiff would not have purchased and/or paid for Skechers Shape-ups and would not have incurred related medical costs.

83. Specifically, Plaintiff was misled by the deceptive conduct described herein.

84. Defendants' deceptive, unconscionable, or fraudulent representations and material omissions to consumers, including Plaintiff, constituted unfair and deceptive acts and trade practices in violation of the state consumer protection statutes listed below.

85. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, substantial sums of money from Plaintiff for Skechers Shape-ups that they would not have paid had Defendants not engaged in unfair and deceptive conduct.

86. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or trade practices in violation of:

- a. Utah Code Ann. §§ 13-2-1 *et seq.* (Unfair Practices Act);
- b. Utah Code Ann. §§ 13-11-1 *et seq.* (Consumer Sales Practices Act); and
- c. Utah Code Ann. §§ 13-11a-1 *et seq.* (Truth in Advertising)

87. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at consumers was to create a demand for and sell Skechers Shape-ups. Each aspect of Defendants' conduct combined to artificially create sales of Skechers Shape-ups.

88. Consumers relied upon Defendants' misrepresentations and omissions in determining which shoes to purchase.

89. By reason of the unlawful acts engaged in by Defendants, Plaintiff has suffered ascertainable loss and damages.

90. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff was damaged by paying in whole or in part for Skechers Shape-ups.

91. As a direct and proximate result of Defendants' violations of Utah's consumer protection statutes, Plaintiff has sustained economic losses and other damages for which they are

entitled to statutory and compensatory damages, and declaratory relief, in an amount to be proven at trial.

**ELEVENTH CAUSE OF ACTION
PUNITIVE DAMAGES**

92. Plaintiff hereby incorporates by reference all allegations contained in the preceding paragraphs, as though fully set forth herein.

93. At all times material hereto, the Defendants knew or should have known that Skechers Shape-ups were inherently more dangerous and prone to failure than toning shoes.

94. At all times material hereto, the Defendants attempted to misrepresent and did misrepresent facts concerning the safety and efficacy of Skechers Shape-ups.

95. Defendants' misrepresentation included intentionally withholding material information from the medical community and the public, including Plaintiff, regarding the safety of Skechers Shape-ups.

96. Notwithstanding the foregoing, Defendants continued to aggressively market Skechers Shape-ups to consumers, including Plaintiff, without disclosing the aforesaid problems and injuries.

97. The Defendants knew of Skechers Shape-ups' defective and unreasonably dangerous nature, as set forth herein, but continued to design, develop, manufacture, market, distribute and sell it so as to maximize sales and profits at the health and safety of the public, including Plaintiff, in conscious and/or reckless disregard of the foreseeable harm caused by the device.

98. Defendants fraudulently, intentionally, and/or recklessly concealed and failed to disclose to the public, including Plaintiff, the dangers of Skechers Shape-ups in order to ensure continued and increased sales.

99. Defendants' intentional and/or reckless failure to disclose information deprived Plaintiff of the necessary information to enable Plaintiff to weigh the true risk of using Skechers Shape-ups against the benefits.

100. The aforesaid conduct of Defendants in the design, manufacturing, assembly, packaging, warning, marketing, advertising, promotion, distribution and sale of Skechers Shape-ups was fraudulent, knowing misconduct, willful and/or conduct undertaken to recklessly and with conscious disregard for the safety of Plaintiff such as to constitute despicable conduct, and oppression, fraud and malice, and at all times relevant, such conduct was ratified by the corporate Defendants herein, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example to Defendants, and to deter them from similar conduct in the future.

101. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein pursuant to all appropriate state statutes and common law. The injuries and damages alleged herein are permanent and will continue into the future.

PRESERVATION CLAIMS

102. Plaintiff hereby incorporates by reference all allegations contained in the preceding paragraphs, as though fully set forth herein.

103. Many States have recently enacted tort reform statutes with "exclusive remedy" provisions. Courts have yet to determine whether these exclusive remedy provisions eliminate or supersede, to any extent, state common law claims. If during the pendency of this action this court makes any such determination, Plaintiff hereby specifically makes claim to and preserves any State claim based upon any exclusive remedy provision, under any state law this court may apply, to the extent not already alleged above.

104. To the extent that Defendant(s) may claim that one or more of Plaintiff's claims are barred by the applicable statute of limitations, Plaintiff asserts that the statute of limitations is and has been tolled by Plaintiff's discovery that her injury(ies) was/were caused by Defendants' defective product and failure to properly and adequately warn of the products' risks, all as more fully set forth in this Complaint, after the injury sustained by Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, DEBBIE HADLEY, prays for the following relief:

- A. Trial by Jury;
- B. Judgment in favor of Plaintiff and against all Defendants, for all damages in such amounts as may be proven at trial;
- C. Compensation for non-economic losses, including, but not limited to medical expenses, disfigurement, pain and suffering, mental anguish and emotional distress, in such amounts as may be proven at trial;
- D. Punitive and/or exemplary damages in such amounts as may be proven at trial;
- E. Restitution and disgorgement of all revenue that Defendants have obtained through the manufacture, marketing, and sale of Skechers Shape-ups;
- F. Attorney's fees and costs;
- G. Pre and post-judgment interest; and
- H. Any and all further relief, both legal and equitable, that the court may deem just and proper.

Respectfully submitted,

/s/ Richard W. Schulte
Richard W. Schulte (0066031)
WRIGHT & SCHULTE, LLC
812 E. National Road
Dayton, Ohio 45377
Tel: (937) 435-7500
Fax: (937) 435-7511
rschulte@legaldayton.com
Lead Counsel for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Debbie Hadley
(b) County of Residence of First Listed Plaintiff Tooele, Utah
(c) Attorney's (Firm Name, Address, and Telephone Number)
Wright & Schulte, LLC 812 E. National Rd.
Vandalia, Ohio 45377; 937-435-7500

DEFENDANTS
Skechers USA, Inc., Skechers USA, Inc. II, and Skechers Fitness Group
County of Residence of First Listed Defendant Los Angeles, California
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
Michael Eagen; Dinsmore & Shohl, LLP; 255 Fifth Street, Ste. 1900, Cincinnati, Ohio 45202; 513-977-8200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 Diversity
Brief description of cause:
Product liability action for damages as a result of defective Skechers Shape-Up toning shoes

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 75,001.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE Thomas Russell
DOCKET NUMBER 11-md-2308

DATE 12/15/2012
SIGNATURE OF ATTORNEY OF RECORD /s/ Richard W. Schulte

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.