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Attorney for Plaintiffs

By: Patricia A. Schiripo
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MERCER COUNTY
DOCKET NO.: MER-C _____

<p>JEFFREY S. CHIESA, Attorney General of the State of New Jersey and ERIC T. KANEFSKY, Acting Director of the New Jersey Division of Consumer Affairs,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SKECHERS USA, INC., d/b/a SKECHERS, a Delaware corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action</p> <p><u>FINAL CONSENT JUDGMENT</u></p>	
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INTRODUCTION

1. The parties to this Action Plaintiffs, Jeffrey S. Chiesa, the Attorney General of the State of New Jersey and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs (collectively "Plaintiffs"), and Skechers USA, Inc. d/b/a Skechers ("Defendant"), as evidenced by the signatures below, do consent to the entry of this Final Consent Judgment (hereinafter also referred to as this "Judgment") and its provisions. This

larger forty-five member multistate action¹ and is being filed in concert with consent judgments in those jurisdictions as well as a stipulated judgment reached with the Federal Trade Commission.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

2. After engaging in settlement discussions, the Defendant, without admitting any liability or wrongdoing, agrees to the entry of this Judgment. The Defendant states that it does so solely to avoid the time, further expense, inconvenience, and interference with its business operations associated with litigation. Nothing in this Judgment shall constitute an admission of Defendant's liability or be used as evidence of Defendant's liability.

3. The Defendant hereby accepts and expressly waives any defect in connection with the service of process of the Summons and Complaint in this matter.

4. This Judgment is entered into by the Defendant as its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Judgment, and it consents to its entry without further notice, and avers that no offers, agreements or inducements of any nature whatsoever have been made to it by the Plaintiffs or their attorneys or any State employee to procure this Judgment.

5. The Defendant has, by signature of counsel hereto, waived any right to add, alter, amend, appeal, petition for *certiorari*, or move to reargue or rehear or be heard in connection with any judicial proceeding concerning the entry of this Judgment and any and all challenges in law or equity to the entry of the Judgment by the courts. If the Court elects to hold any hearing

¹ The multistate action consists of Attorneys General from the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The State of Hawaii is represented by the State of Hawaii Office of Consumer Protection and the State of Georgia is represented by the Georgia Governor's Office of Consumer Protection.

on this Judgment, a representative of the Attorney General's office will briefly summarize the settlement for the Court. The Defendant agrees to support the Judgment and its terms at any such hearing for approval.

6. In the event the Court shall not approve this Judgment, this Judgment shall be of no force and effect against either party, the parties will revert to their respective positions immediately prior to reaching the settlement giving rise to this Judgment, and to the extent consistent with State law, no documents or communications related to the settlement shall have any effect or be admissible in evidence for any purpose in this litigation or in any other proceeding.

DEFINITIONS

7. Unless otherwise specified, the following definitions shall be used in this Judgment:

- (A) **“Adequate and Well-Controlled Human Clinical Study”** means a clinical study that is randomized, controlled (including, but not limited to, controlled for dietary intake if testing for weight loss or a reduction in body fat), blinded to the maximum extent practicable, uses an appropriate measurement tool or tools, and is conducted impartially by persons qualified by training and experience to conduct and measure compliance with such a study.
- (B) **“Attorney General”** means Attorney General of the State of New Jersey.
- (C) **“Consumer Law”** means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and any of its amendments.

- (D) **“Covered Product”** means Skechers Toning Footwear, and any other Skechers footwear product that purports to improve or increase muscle tone, muscle strength, muscle activation, overall circulation, or aerobic conditioning, and/or that purports to result in increased calorie burn, weight loss, loss of body fat or improvement or reduction in body composition.
- (E) **“Covered Conduct”** means the statements or representations made by Defendant, directly or through any third-party on behalf of Defendant, about the benefits, characteristics, or effects of Skechers Toning Footwear that are expressly subject to the Permanent Injunction provisions contained in Paragraph 16(C)-(G) of this Judgment.
- (F) **“Defendant”** means **Skechers USA, Inc.**, doing business as **Skechers**, and its successors and assigns.
- (G) **“Effective Date”** means the date on which a copy of this Judgment, duly executed by Skechers USA, Inc. and by the Plaintiffs is approved by, and becomes a judgment of the Court.
- (H) **“Family Member”** or **“Familial Relationship”** means a spouse, mother, father, grandmother, grandfather, son, daughter, brother, sister, grandson, granddaughter, uncle, aunt, or a spouse’s mother, father, grandmother, grandfather, son (if different from above), daughter (if different from above), brother, sister, grandson (if different from above), granddaughter (if different from above), uncle (if different from above), and aunt (if different from above).

- (I) **“Including”** in this Judgment means “including, without limitation.”
- (J) **“Multistate Executive Committee”** means the Attorney General Offices, and their representatives, from the States of Arizona, Illinois, Maryland, Ohio, South Carolina, Tennessee, Washington, and Wisconsin.
- (K) **“Multistate Working Group”** means the Attorney General Offices, and their representatives, from the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin.²
- (L) **“Skechers Toning Footwear”** means, collectively, Shape-ups, Resistance Runner, Shape-ups Toners, and Tone-ups.
- (M) **“State”** means the State of New Jersey.

JURISDICTION

8. Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the Plaintiffs to apply to this Court for such further judgments and directions as may be necessary or appropriate for the construction, modification or execution

² The State of Hawaii is represented by the State of Hawaii Office of Consumer Protection and the State of Georgia is represented by the Georgia Governor’s Office of Consumer Protection.

of this Judgment, including the enforcement of compliance therewith and remedies, penalties and sanctions for violation thereof. The Defendant agrees to pay all applicable Court costs and attorneys' fees that are ordered by the Court in connection with any successful petition to enforce any provision of this Judgment against the Defendant.

VENUE

9. Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the parties relating hereto or arising out of this Judgment shall be in the Superior Court of New Jersey, Chancery Division, Mercer County.

DEFENDANT

10. The Defendant represents and warrants that it is the proper party to this Judgment.

11. The Defendant represents and warrants that signatories to this Judgment have authority to act for and bind the Defendant.

12. Beginning in 2008 and continuing into the present, the Defendant marketed and sold Skechers Toning Footwear nationwide including in Mercer County, New Jersey. At all times relevant hereto, the Defendant engaged in trade affecting consumers in the State of New Jersey including, but not limited to, Mercer County.

13. The Defendant acknowledges that it understands that the Plaintiffs and this Court expressly rely upon all representations and warranties in this Judgment. The Defendant further acknowledges and understands that if the Defendant makes any false or deceptive representation or warranty, the Plaintiffs have the right to move that the Defendant making such false or deceptive representation(s) or warranty(ies) be held in contempt and to seek sanctions and remedies under any other law, regulation or rule, together with any and all such other sanctions, remedies, or relief as may be available to the Plaintiffs in law or equity, if the Plaintiffs so elect.

PLAINTIFFS

14. The Plaintiffs have commenced this action pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* The Plaintiffs are appearing by and through their attorney Patricia A. Schiripo, Deputy Attorney General.

APPLICATION OF JUDGMENT

15. Unless otherwise expressly stated, the Defendant agrees that the duties, responsibilities, burdens, and obligations it is undertaking pursuant to this Judgment shall apply to the Defendant, as defined above.

PERMANENT INJUNCTION

16. The Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Judgment, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product in or affecting trade or commerce:

Compliance with State Consumer Law

- (A) Shall be permanently restrained and enjoined from engaging, or assisting others in engaging, in any unfair or deceptive acts or practices in the conduct of trade or commerce or its business and shall fully abide by all provisions of the Consumer Law which prohibit any and all unfair and/or deceptive acts or practices.
- (B) Shall be permanently restrained and enjoined from making, or assisting others in making, any statement or representation that goods or services have uses or benefits that they do not have.

Prohibited Representations: Strengthening Claims

- (C) Shall be permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation that such Covered Product is effective in strengthening muscles unless the representation is non-misleading and non-deceptive, and, at the time of making such representation, the Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Paragraph 16(C), competent and reliable scientific evidence shall consist of at least one Adequate and Well-Controlled Human Clinical Study of the Covered Product that conforms to acceptable designs and protocols, is of at least six-weeks duration, and the result of which, when considered in light of the entire body of relevant and reliable scientific evidence, is sufficient to substantiate that the representation is true.

Prohibited Representations: Weight Loss Claims

- (D) Shall be permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation that such Covered Product causes weight loss unless the representation is non-misleading and non-deceptive, and, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Paragraph 16(D), competent and reliable scientific

evidence shall consist of at least two Adequate and Well-Controlled Human Clinical Studies of the Covered Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Prohibited Representations: Other Health or Fitness-Related Claims

- (E) Shall be permanently restrained and enjoined from making, or assisting others in making, directly or by implication, Including through the use of a product name, endorsement, depiction, or illustration, any representation, other than representations covered under Paragraph 16(C) and/or Paragraph 16(D) of this Judgment, about the health or fitness benefits of any Covered Product including, but not limited to, representations regarding caloric expenditure, calorie burn, blood circulation, aerobic conditioning, muscle tone, and muscle activation, unless the representation is non-misleading and non-deceptive and, at the time of making such representation, the Defendant possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Paragraph 16(E), competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and

evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

Prohibited Representations: Tests or Studies

- (F) Shall be permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, directly or by implication, including through the use of any product name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research including, but not limited to, misrepresenting that wearing any Covered Product will result in a quantified percentage or an amount of muscle activation, toning, strengthening, calorie burn, caloric expenditure, or weight loss.

Disclosure of Material Connections to Studies in Advertisements

- (G) Shall, whenever it refers to any study in advertisements, marketing materials, or elsewhere to promote its Covered Products, clearly and conspicuously disclose in such advertisements, marketing materials, or elsewhere to promote its Covered Products any material connections between the study's authors or supervising researchers and the Defendant that consumers would find relevant in assessing the accuracy of a study such as any conflict of interest, including the fact that the author, supervising researcher, or a Family Member was compensated by or on behalf of the Defendant, or any Familial Relationship between a study's author or supervising researcher and a director, officer, or an employee (but only if the employee has primary responsibility with respect to the Covered Product) of the Defendant. For purposes of this Paragraph 16(G),

“clearly and conspicuously,” when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a consumer to read and comprehend it. In a print advertisement or promotional material, including point of sale display or brochure materials directed to consumers, the disclosures shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears.

17. Unless otherwise expressly stated, the preceding injunctive provisions, (16(A)-(G)), shall take effect on the Effective Date. No cost bond shall be required for the injunction.

CONSUMER PAYMENTS

18. Consumer payments shall be made and distributed pursuant to the Federal Trade Commission’s *Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief*, which sets forth Forty Million Dollars (\$40,000,000) in the aggregate for available funds for this purpose less administrative expenses associated with the claims

procedure. Defendant shall include a requirement in the Class Action Settlement Agreement for the Class Action Settlement Administrator to provide to Plaintiffs, within thirty (30) days of delivery of consumer payments pursuant to the consumer payments program by the Class Action Settlement Administrator, an electronically searchable alphabetical list of consumers who reside in this State who have made claims out of the proposed consumer payments fund, the consumer's contact information, and the amount paid to those consumers.

COMPLIANCE REPORTING

19. For a period of three (3) years from the date of entry of this Judgment, the Defendant shall notify the Plaintiffs of any changes in the corporate structure of the Defendant or any business entity that the Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Judgment, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment; or a change in the business name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any such change in the business entity about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Plaintiffs as soon as is practicable after obtaining such knowledge.

20. One hundred eighty (180) days after the date of entry of this Judgment, the Defendant shall provide a written report to the Plaintiffs, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Judgment. This report shall include, but not be limited to: (1) a copy of each acknowledgment of receipt of this Judgment, obtained pursuant to the Section titled

“Distribution of Judgment”; and (2) any other changes required to be reported under Paragraph 19.

21. The Defendant shall notify the Plaintiffs of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

22. For the purposes of this Judgment, the Defendant shall, unless otherwise directed by the Plaintiffs’ authorized representatives, send by overnight courier all reports and notifications required by this Judgment to the Plaintiffs, at the following address:

Patricia A. Schiripo
Deputy Attorney General / Assistant Section Chief
124 Halsey Street, 5th floor
P.O. Box 45029
Newark, New Jersey 07101

or as subsequently directed by the Plaintiffs. *Provided that*, in lieu of overnight courier, the Defendant may send such reports or notifications by first-class mail, but only if the Defendant contemporaneously sends an electronic version of such report or notification to the Plaintiffs at:

patricia.schiripo@dol.lps.state.nj.us

or as subsequently directed by the Plaintiffs.

23. For purposes of the compliance reporting and monitoring required by this Judgment, the Plaintiffs are authorized to communicate directly with the Defendant unless or until the Defendant directs the Plaintiffs to communicate with it through its outside legal counsel and identifies the name and contact information for said counsel. All communications to the Defendant related to this Judgment should go to the General Counsel of Skechers at the Defendant’s corporate headquarters, with a copy to Daniel Petrocelli, Esq., O’Melveny & Myers LLP, 1999 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067.

RECORDKEEPING

24. For a period of five (5) years from the date of entry of this Judgment, the Defendant is hereby restrained and enjoined from failing to create and retain the following records:

- (A) Accounting records that reflect the cost of the Covered Product, revenues generated for the Covered Product, and, to the extent such records are created and maintained in the ordinary course of business, the disbursement of such revenues;
- (B) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable; provided however, that with respect to those persons covered by Paragraph 24(B) whose employment has terminated, personnel records need only be retained for three (3) years from the date of termination;
- (C) Records accurately reflecting: the name, address, and telephone number of each domestic distributor, domestic reseller or domestic retailer of the Covered Product; the dollar amounts paid; and the identification and quantity of items purchased;
- (D) Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of Covered Product purchased, and description of

items or services purchased, to the extent such information is obtained in the ordinary course of business;

- (E) Complaints and refund requests relating to any Covered Product (whether received directly or indirectly, such as through a third-party) and any responses to those complaints or requests;
- (F) Copies of all advertisements, promotional materials, sales scripts, training materials, websites, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, sale, or distribution of any Covered Product. For purposes of this provision, keeping one representative copy of all non-identical materials referenced in this provision is sufficient for compliance;
- (G) All materials that were relied upon in making any representations contained in the materials identified in (F) above, Including all documents evidencing or referring to the accuracy of any claim therein or to the benefits, performance, or efficacy of any Covered Product, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirms, contradicts, qualifies, or calls into question the accuracy of any claim regarding the benefits, performance, or efficacy of any products covered by this Judgment, including complaints and other communications with consumers or with governmental or consumer protection agencies;
- (H) Records accurately reflecting the name, address, and telephone number of each laboratory engaged in the testing or the development or creation of

any testing obtained for the purpose of advertising, marketing, promoting, offering for sale, selling, or distributing any Covered Product; and

- (I) All records and documents necessary to demonstrate full compliance with each provision of this Judgment, including, but not limited to, copies of acknowledgments of receipt of this Judgment required by the Sections titled “Distribution of Judgment” and “Acknowledgment of Receipt of Judgment” and all reports submitted to the Plaintiffs pursuant to the Section titled “Compliance Reporting.”

DISTRIBUTION OF JUDGMENT

25. For a period of three (3) years from the date of entry of this Judgment, the Defendant shall deliver copies of this Judgment as directed below:

- (A) To each of its principals, officers, and directors having decision-making authority with respect to the subject matter of the Judgment;
- (B) To all of its employees, agents, and representatives having primary responsibilities with respect to the subject matter of the Judgment, including, but not limited to any individual and/or entity employed by the Defendant in conducting any tests, analyses, research, or studies to support any fitness benefit claims associated with Skechers Toning Footwear; and
- (C) For current personnel of the Defendant, delivery shall be within seven (7) days of entry of this Judgment. For new personnel of the Defendant, delivery shall occur prior to their assuming their responsibilities. For any business entity resulting from any change in structure set forth in

Paragraph 19 titled "Compliance Reporting," delivery shall be at least fourteen (14) days prior to the change in structure.

26. The Defendant shall secure a signed and dated statement acknowledging receipt of the Judgment, within thirty (30) days of delivery, from all persons receiving a copy of the Judgment pursuant to this Section.

NOTIFICATION OF JUDGMENT

27. The Defendant shall send no later than fifteen (15) days after entry of this Judgment, by first-class mail, postage paid and return receipt requested, or by courier service such as Federal Express with signature proof of delivery, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to each domestic distributor, domestic reseller, and domestic retailer who purchased or otherwise received any Covered Product directly from the Defendant and who continues to market, sell, or offer for sale any Covered Product. The notice required by this Paragraph 27 shall not include any other document or enclosures and may be sent to the principal place of business of each such domestic distributor, domestic reseller or domestic retailer.

ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT

28. The Defendant shall, within seven (7) business days of receipt of this Judgment after entry by the Court, submit to the Plaintiffs a truthful sworn statement acknowledging receipt of this Judgment.

PAYMENT TO THE STATES

29. No later than thirty (30) days after the Effective Date of this Judgment, the Defendant shall pay a total amount of Five Million Dollars (\$5,000,000) to be divided and paid by the Defendant directly to each Signatory Attorney General of the Multistate Working Group

in an amount to be designated by, and in the sole discretion of, the Multistate Executive Committee. Said payment shall be used by the Plaintiffs as and for attorneys' fees and other costs of investigation and litigation, or be placed in, or applied to, the consumer protection enforcement fund, including future consumer protection enforcement, consumer education, litigation, or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by State law, at the sole discretion of each Signatory Attorney General. No portion of any payment under the Judgment shall be deemed a payment of any fine, penalty, or punitive assessment.

30. The payment referenced in Paragraph 29 shall be made by bank check, or other guaranteed funds and shall be forwarded to:

Patricia A. Schiripo
Deputy Attorney General / Assistant Section Chief
Division of Law
124 Halsey Street, 5th floor
P.O. Box 45029
Newark, New Jersey 07101

GENERAL PROVISIONS

31. The acceptance of this Judgment by the Plaintiffs shall not be deemed approval by the Plaintiffs of any of the Defendant's advertising or business practices. Further, neither the Defendant nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the Plaintiffs or any other governmental unit of the State has approved, sanctioned, or authorized any practice, act, advertisement or conduct of the Defendant.

32. This Judgment may only be enforced by the Plaintiffs, the Defendant, and this Court.

33. The titles and headers to each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment.

34. Nothing in this Judgment shall limit the Plaintiffs' right to obtain information, documents, or testimony from the Defendant pursuant to any state or federal law, regulation, or rule.

35. Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or consumers. This Judgment shall not bar the Plaintiffs, or any other governmental entity from enforcing laws, regulations, or rules against the Defendant.

36. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, agreed to by both parties, and approved by this Court and then only to the extent specifically set forth in such written waiver, modification, or amendment.

37. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment. For the Plaintiffs, this shall be without prejudice in the future to the imposition of any applicable penalties, including, but not limited to, contempt, civil penalties as set forth in N.J.S.A. 56:8-13 and/or the payment of attorneys' fees and costs to the Plaintiffs pursuant to N.J.S.A. 56:8-11 and -19, and any other remedies under applicable State law.

38. If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

39. Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by the Defendant within a stated time period or upon a specified date.

40. Nothing in this Judgment shall be construed to waive any claims of sovereign immunity the Plaintiffs may have.

41. Aside from the Consumer Payments provision which refers to the Federal Trade Commission's Stipulated Judgment amount for consumer payments, this Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understanding, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed hereto or attached hereto.

42. The Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the State which are prohibited by this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

43. If the Defendant has provided the Plaintiffs with certain documents, advertisements, and contracts, the Defendant acknowledges and agrees that providing these documents to the Plaintiffs in no way constitutes the Plaintiffs' pre-approval, review for compliance with State or federal law, or with this Judgment, or a release of any issues relating to such documents.

44. The Defendant further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Judgment.

45. This document may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

46. The terms of this Judgment shall be governed by the laws of the State.

MONITORING FOR COMPLIANCE

47. Upon request, the Defendant shall provide books, records or documents to the Plaintiffs, and shall informally, or formally under oath, provide testimony or other information to the Plaintiffs relating to compliance with this Judgment. The Defendant shall make any requested information available within fourteen (14) days of the request, at the Office Attorney General or at such other location within the State as is mutually agreed in writing by the Defendant and the Attorney General. This shall in no way limit the Plaintiffs' right to obtain documents, records, testimony, or other information pursuant to any law, regulation, or rule.

COMPLIANCE WITH ALL LAWS

48. Nothing in this Judgment shall be construed as relieving the Defendant of the obligation to comply with all State and federal laws, regulations, or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

RELEASE

49. Nothing in this Judgment shall impair or limit the private right of action that any consumer, person, or entity may have against the Defendant.

50. By execution of this Judgment and following a full and complete payment to the States as required under Paragraph 29, as well as a full and complete payment to the Federal Trade Commission for consumer payments as required under Paragraph 18, the Attorney General releases and forever discharges the Defendant, as defined above, from the following: all civil claims, causes of action, damages, consumer payments, fines, costs, and penalties that the Plaintiffs could have asserted against the Defendant, as defined above, under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., resulting from the Covered Conduct up to and including the Effective Date that is the subject of this Judgment.

51. Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the Release in Paragraph 50 as to any entity or person, including the Defendant:

- (A) Any criminal liability that any person or entity, including the Defendant, has or may have to the State.
- (B) Any civil or administrative liability that any person or entity, including the Defendant, has or may have to the State under any statute, regulation, or rule not expressly covered by the Release in Paragraph 50 above, including but not limited to, any and all of the following claims:
 - (i) State or federal antitrust violations;
 - (ii) State or federal securities violations; or
 - (iii) State or federal tax claims.

COURT COSTS

52. All court costs associated with this action and any other incidental costs or expenses incurred in this action thereby shall be borne by the Defendant. No costs shall be taxed to the State. Further, no discretionary costs shall be taxed to the State.

PENALTY FOR FAILURE TO COMPLY

53. The Plaintiffs shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

54. This Judgment is expressly contingent on court approval of the Federal Trade Commission's *Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief* and complete payment of \$40,000,000 under the Federal Trade Commission's *Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief*. If the Federal Trade Commission's *Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief* is not approved, this Judgment shall be without force or effect on either party.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

This the ____ day of _____, 2012.

PAUL INNES, P.J. Ch.

APPROVED AND AGREED TO:

FOR PLAINTIFFS:

JEFFREY S. CHIESA

ATTORNEY GENERAL OF NEW JERSEY

By: Patricia Schiripo

Patricia Schiripo

Deputy Attorney General

124 Halsey Street, 5th floor

P.O. Box 45029

Newark, New Jersey 07101


Telephone (973) 648-7819

Patricia.schiripo@dol.lps.state.nj.us

APPROVED AND AGREED TO:

FOR DEFENDANT:

SKECHERS USA, INC., d/b/a Skechers

By: 
DAVID WEINBERG
Executive Vice President
SKECHERS USA, INC., d/b/a Skechers
228 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

APPROVED AND AGREED TO:

DEFENDANT'S COUNSEL OF RECORD:

By: 

David J. Treacy
New Jersey Bar No. 028162000
Dinsmore & Shohl LLP
Lexington Financial Center
250 West Main Street, Suite 1400
Lexington, Kentucky 40507
Phone: (859) 425-1000
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REPRESENTATIVES OF SKECHERS USA, INC.:

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ATTACHMENT A

[On Skechers USA, Inc., Letterhead]

[Insert Date]

[Addressee]

Dear Skechers USA, Inc., Retail Business Partner:

In response to a lawsuit by the Federal Trade Commission (FTC) and separate lawsuits brought by a group of state attorneys general, Skechers has agreed to stop making certain claims for the following footwear products: Shape-ups, the Resistance Runner, Toners, and Tone-ups.

Although we dispute the charges, to settle the FTC's and the states' cases against us, Skechers has agreed to stop using advertising or promotional materials claiming that any of our footwear products can:

- Improve or increase muscle tone and muscle strength;
- Improve or increase overall circulation or aerobic conditioning;
- Result in increased weight loss or loss of body fat; and/or
- Result in improvement or reduction in body composition.

In addition to the above, Skechers has agreed to stop using advertising or promotional materials claiming that the Resistance Runner improves or increases muscle activation.

Please take these three steps immediately:

- (1) If you have materials on display (POS, posters, etc.) that include any of these claims, please remove them.
- (2) Where these claims appear on boxes, please cover them with stickers that Skechers will provide.
- (3) If inserts in boxes or footwear hangtags include any of these claims, please remove them.

We are actively pursuing additional studies in the marketplace. We look forward to sharing these details with you as they become available.

You can find out more about the settlement at www.ftc.gov. Please call [Insert name and telephone numbers of the responsible Skechers USA, Inc., Attorney or Officer.] if you have any questions.

Skechers thanks you for your business and greatly appreciates your cooperation in this matter.

Sincerely,

Skechers USA, Inc.