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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

17 ARIANNA ROSALES, and
18 CHARLICE ARNOLD, on Behalf of
19 Themselves, All Others Similarly
20 Situated and the General Public,

Plaintiffs,

v.

21 FITFLOP USA, LLC,

22 Defendant.

Case No.: 11cv0973-W (KSC)

CLASS ACTION

SECOND AMENDED CLASS
ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
COMPETITION LAW,
BUSINESS AND PROFESSIONS
CODE §17200 *ET SEQ.*;
2. VIOLATIONS OF CONSUMERS
LEGAL REMEDIES ACT, CIVIL
CODE §1750 *ET SEQ.*; AND
3. BREACH OF EXPRESS
WARRANTY

DEMAND FOR JURY TRIAL

Judge: Hon. Thomas J. Whelan
Courtroom: 3C, 3rd Floor - Schwartz
Date Filed: May 5, 2011
Trial Date: TBD

1 Plaintiff Charlice Arnold, on behalf of herself and all others similarly
 2 situated, brings this action against defendant FitFlop USA, LLC (“FitFlop” or
 3 “Defendant”), and states:

4 **JURISDICTION AND VENUE**

5 1. This Court has original jurisdiction pursuant to 28 U.S.C.
 6 §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds
 7 the sum or value of \$5,000,000 and is a class action in which some of the
 8 members of the class of plaintiffs, whose number exceeds 100, are citizens of
 9 states different from FitFlop. Further, greater than two-thirds of the class
 10 members reside in states other than the state in which FitFlop is a citizen.

11 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that
 12 many of the acts and transactions giving rise to this action occurred in this
 13 district and because Defendant:

14 (a) is authorized to conduct business in this district and has
 15 intentionally availed itself of the laws and markets within this district through the
 16 promotion, marketing, distribution and sale of its products in this district;

17 (b) does substantial business in this district; and

18 (c) is subject to personal jurisdiction in this district.

19 **NATURE OF ACTION**

20 3. Through an extensive, comprehensive, and uniform nationwide
 21 marketing campaign, Defendant claims that its expensive FitFlop Footwear
 22 (ranging from approximately \$50-\$240 per pair) with its patent-pending
 23 “Microwobbleboard™ Technology” will provide to anyone who wears it a
 24 variety of health benefits ordinary footwear cannot provide. Defendant promises
 25 that its shoes improve posture, increase muscle activation and toning, and reduce
 26 joint strain.¹ For example, the product packaging on FitFlop sandals states:

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 28 ¹ For purposes of this Complaint, “FitFlop Footwear” or “FitFlop(s)” refers
 collectively to all past and present men’s and women’s style sandals, boots,

1 “FitFlop Footwear is biomechanically engineered to help tone and tighten your
2 leg muscles while you walk in them.” Defendant represents that independent
3 studies show that FitFlop Footwear is proven to provide these benefits.
4 However, Defendant’s health benefit claims are deceptive, and FitFlop Footwear
5 is not proven to provide any of these benefits.

6 4. Defendant’s deceptive marketing campaign begins with the
7 products’ name - FitFlop - and deceptive trademarked taglines: “GET A
8 WORKOUT WHILE YOU WALK™” and “RELIEF YOU CAN WEAR ON
9 YOUR FEET™.” The product name and trademarked taglines imply that
10 FitFlops deliver the specific claimed benefits. Defendant’s uniform and
11 extensive advertising campaign builds on this deception.

12 5. There are no well-designed scientific studies that support
13 Defendant’s health benefits claim. As a recent study sponsored by the
14 independent American Council on Exercise concluded, “wearing so-called
15 fitness shoes will have no beneficial effect on exercise intensity or caloric
16 expenditure compared to wearing a regular running shoe. Additionally, there is
17 no evidence that wearing shoes with an unstable sole design will improve muscle
18 strength and tone more than wearing a regular running shoe.” *See* John P.
19 Porcari, PhD., *et al.*, *The Physiologic and Electromyographic Responses to*
20 *Walking in Regular Athletic Shoes Versus “Fitness Shoes”* at 12, available at
21 <http://www.acefitness.org/getfit/studies/toningshoes-findings.pdf> (“Porcari
22 Report”).

23 6. Despite the deceptive nature of Defendant’s claims and assertions,
24 since 2007 Defendant has employed numerous methods to convey its uniform,
25 deceptive messages to consumers. Defendant conveyed and continues to convey
26 its deceptive claims about FitFlop Footwear through a variety of media,
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28 clogs, slippers, and shoes marketed with Defendant’s Microwobbleboard™
Technology.

1 including point of sale displays, magazines, newspapers, the internet, social
2 media websites, outdoor billboards, bus wraparounds, and on the products'
3 packaging and hang tags. The only reason a consumer would purchase the
4 premium-priced FitFlop Footwear (as opposed to less expensive, ordinary flip
5 flops/sandals/other footwear) is to obtain the advertised health benefits, which
6 FitFlop Footwear does not actually provide.

7 7. As a result of Defendant's deceptive claims, consumers – including
8 Plaintiffs and the other members of the proposed Class – have purchased a
9 product that does not perform as advertised. Moreover, Defendant has been able
10 to charge a significant price premium for FitFlop Footwear over other traditional,
11 comparable footwear products that do not make deceptive health benefits claims.

12 8. Plaintiff Arnold brings this lawsuit on behalf of herself and other
13 similarly situated consumers who purchased FitFlop Footwear, in order to halt
14 the dissemination of this deceptive advertising message, correct the false and
15 misleading perception Defendant has created in the minds of consumers, and
16 obtain redress for those who have purchased FitFlop Footwear. Plaintiffs allege
17 violations of the Consumers Legal Remedies Act, the Unfair Competition Law
18 and breach of express warranty created by Defendant's advertising, including its
19 labeling.

20 PARTIES

21 9. Plaintiff Arianna Rosales is a resident of the state of California.
22 During the time period relevant to this action, Plaintiff Rosales was exposed to
23 Defendant's deceptive labeling and advertising claims, purchased the premium-
24 priced FitFlop Footwear in reliance on the truth of these claims and suffered
25 injury in fact and lost money. In reliance on Defendant's claims, on or about
26 August 20, 2010, at Victoria's Secret, a department store chain located at
27 Imperial Valley Mall in El Centro, California, Plaintiff Rosales purchased a pair
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1 of FitFlop sandals for \$59.99. If she had known the truth about Defendant's
2 claims she would not have purchased the FitFlop sandals.

3 10. Plaintiff Charlice Arnold is a resident of the state of California, and
4 resides in this District. During the time period relevant to this action, Plaintiff
5 Arnold was exposed to Defendant's deceptive labeling and advertising claims,
6 purchased the premium-priced FitFlop Footwear in reliance on the truth of these
7 claims and suffered injury in fact and lost money as a result of Defendant's
8 unlawful conduct by purchasing the falsely advertised FitFlop Footwear.
9 Plaintiff Arnold was exposed to Defendant's advertising in a Victoria's Secret
10 catalog, including Defendant's claims that its FitFlop Footwear improves
11 posture, increases muscle activation and toning, and reduces joint strain. Shortly
12 thereafter, Plaintiff Arnold purchased two pairs of FitFlop sandals from
13 Victoria's Secret, one predominantly brown pair and another predominantly
14 black and silver pair for approximately \$59.99 each. If she had known the truth
15 about Defendant's claims, she would not have purchased the premium-priced
16 FitFlop sandals. Notwithstanding the above, Plaintiff Arnold is not claiming
17 physical harm or seeking the recovery of personal injury damages.

18 11. FitFlop USA LLC is a Delaware limited liability company
19 incorporated in New York. Its standard process address is John Zampino P.C.,
20 405 Lexington Avenue, Suite 5002, New York, New York 10174. FitFlop USA
21 LLC's parent is FitFlop Limited. Defendant markets and sells its FitFlop
22 Footwear to consumers in the United States through authorized retailers such as
23 Victoria's Secret, Amazon.com, Zappos.com, Nordstrom's, Macy's.com,
24 Footsmart, and Bliss. Based upon information and belief, Defendant provided
25 some or all of the FitFlop Footwear advertising to its authorized retailers, and/or
26 Defendant approved or instructed its authorized retailers about how they must
27 advertise and market Defendant's FitFlop Footwear, to be consistent with
28 FitFlop's uniform claims that its footwear tones legs while you walk in it.

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1 12. Plaintiffs are informed and believe, and thus allege, that at all times
2 herein, Defendant’s agents, employees, representatives, and/or partners, were
3 acting within the course and scope of such agency, employment, and
4 representation, on behalf of Defendant.

5 **FACTUAL ALLEGATIONS**

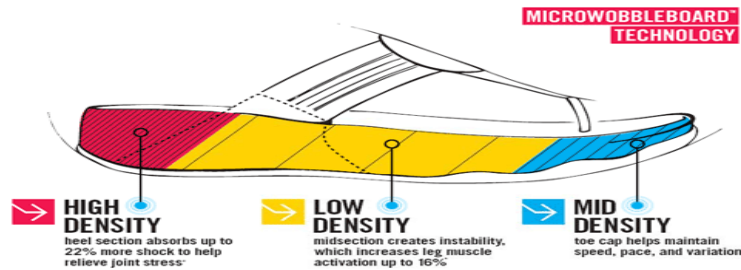
6 13. Like its competitors in the so-called “toning shoes” footwear
7 market, Defendant claims that instability created by FitFlop Footwear’s patent-
8 pending Microwobbleboard™ design (essentially three different densities of
9 foam rubber made of a chemical called ethylene vinyl acetate (“EVA”)), results
10 in increased toning, increased muscle activity, and reduction of joint strain.

11 14. The following pictures are representative of the footwear offerings
12 from Defendant’s Microwobbleboard™ product line, which are all marketed to
13 provide the same health benefits:



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24 15. All styles of FitFlop Footwear that Defendant manufactures, and/or
25 advertises, markets, and sells feature the Microwobbleboard™ technology,
26 which Defendant describes as a three part system comprised of: (1) a high
27 density heel that “absorbs up to 22% more shock to help relieve joint stress;” (2)
28 a low density midsection that “creates instability, which increases leg muscle

1 activation up to 16%,” and (3) a mid density toe cap that “helps maintain speed,
 2 pace, and variation” in walking. See FitFlop, [http://www.fitflop.com/how-they-
 3 work/technology/scat/technology/](http://www.fitflop.com/how-they-work/technology/scat/technology/) (last visited July 10, 2011). Defendant uses the
 4 following photographic image to illustrate the Microwobbleboard™ design:



10 DEFENDANT’S DECEPTIVE ADVERTISING AND MARKETING

11 16. In June 2007, Defendant began selling its FitFlop Footwear in the
 12 United States. Defendant sells FitFlop Footwear to consumers in the United
 13 States through authorized retailers. Also in 2007, Defendant launched a major
 14 advertising campaign to promote FitFlop Footwear.

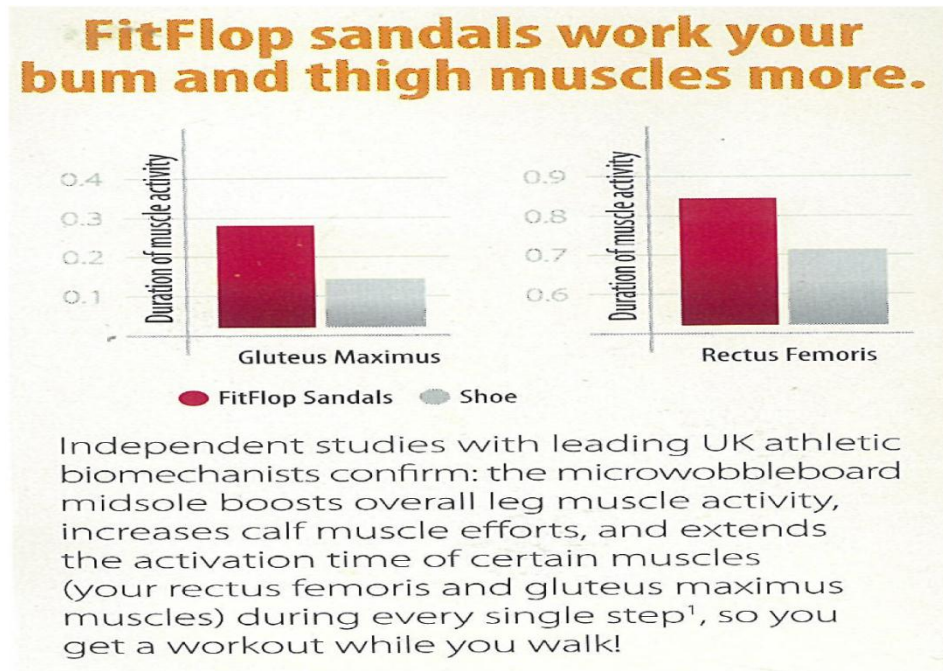
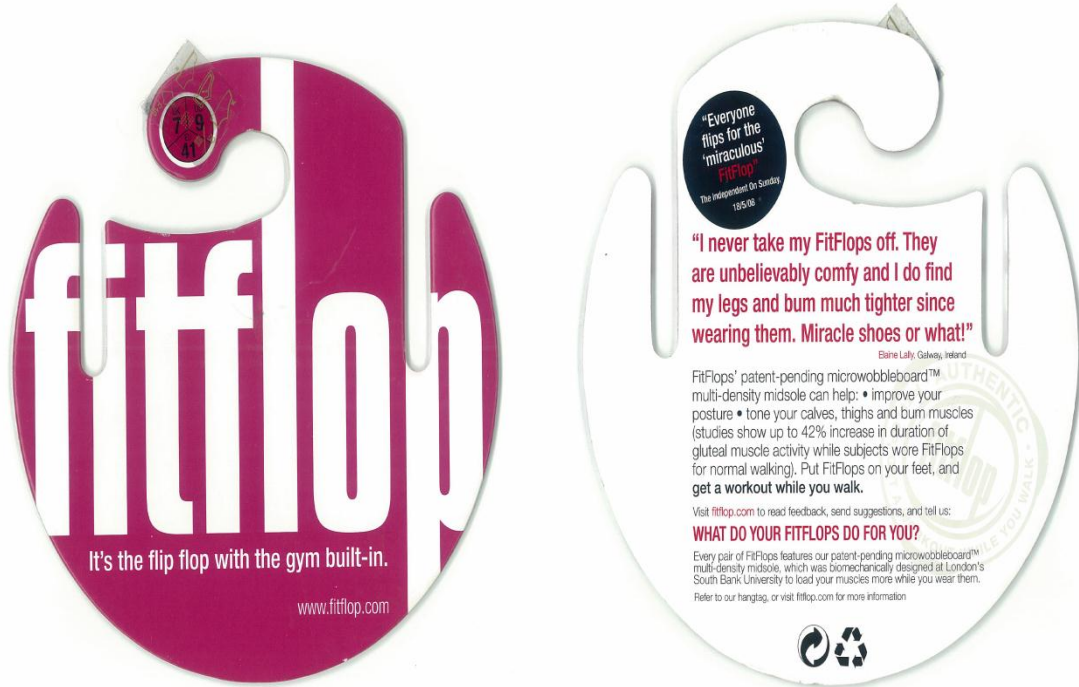
15 17. Defendant uniformly represents that the Microwobbleboard™
 16 technology in all of its FitFlop Footwear allows consumers to “get a workout
 17 while you walk” because the shape and density of the soles are “biomechanically
 18 engineered” to increase the time that your leg muscles are engaged as compared
 19 with ordinary shoes.

20 18. Under the “How They Work” page on Defendant’s website,
 21 <http://www.fitflop.com/scat/howtheywork/> (last visited July 1, 2011), which is
 22 available to the general public, Defendant states:

23 FitFlop Footwear is biomechanically engineered to help tone
 24 and tighten your leg muscles while you walk in them. Studies at
 25 the Centre for Human Performance at London South Bank
 26 University (LSBU) show that normal walking in FitFlop sandals
 27 can help:
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22. Defendant repeats the deceptive statements in its online advertisements. The following is an example of an online advertisement from Defendant's website on "FitFlop benefits":

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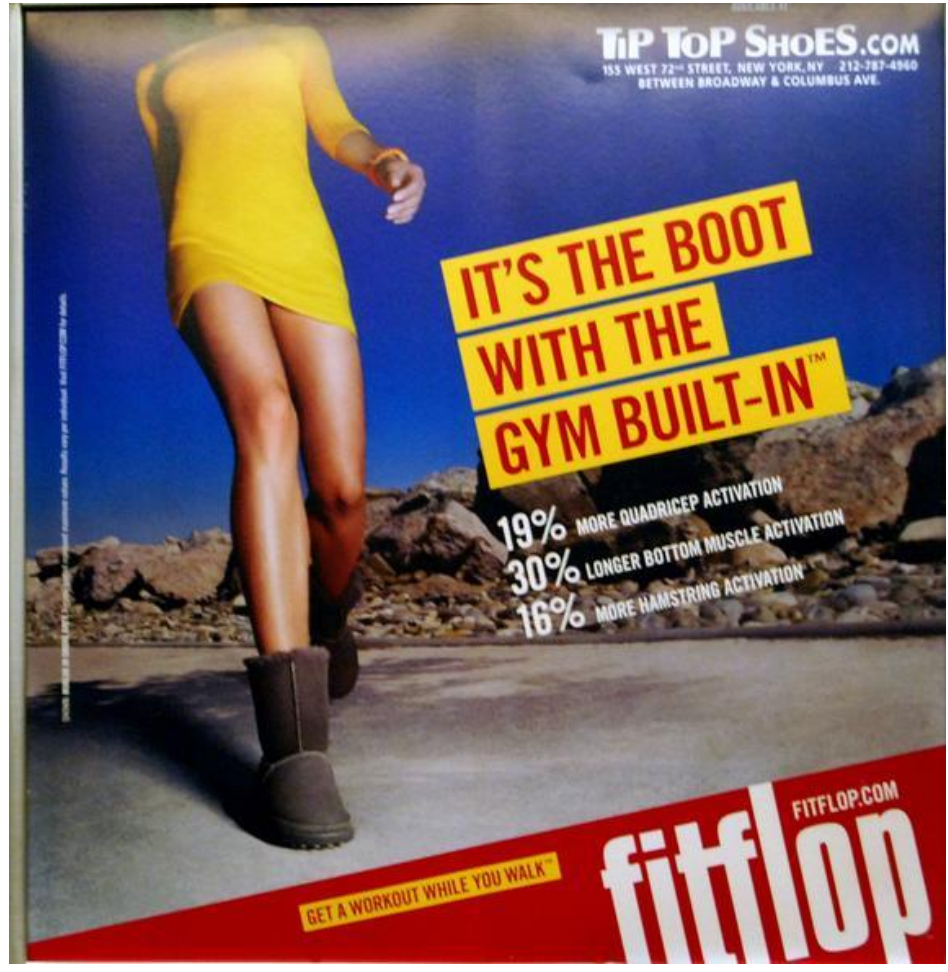


23. Defendant deceptively claims on its website that FitFlop Footwear can help: (a) “realign ground force reaction closer to your joints”; (b) “increase leg and bottom muscle activity (up to 30%);” and (c) relieve ache in your hips and knees, citing a test comparing FitFlop sandals to a control shoe. *See* FitFlop, <http://www.fitflop.com/how-they-work/benefits/scat/benefitsforwomen/> (last visited July 1, 2011).

24. Defendant’s print advertisements contain substantially similar deceptive messages about the ability of FitFlop Footwear to provide health benefits. The following print advertisement is illustrative, representing that walking in FitFlop sandals results in 19% more quadricep activation, 30% longer bottom muscle activation, and 16% more hamstring activation:

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25. Throughout Defendant’s Internet and print advertisements it claims that these health benefits are the result of FitFlop Footwear’s Microwobbleboard™ technology.

26. All of Defendant’s advertisements convey the same message that Defendant’s FitFlop Footwear provides increased muscle toning over traditional footwear simply by walking in it. For example, FitFlop advertising states: “FitFlops feature patent-pending Microwobbleboard™ technology so every step you take in your FitFlops helps tone and trim your legs.”

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27. Similarly, another print advertisement claims that FitFlop Footwear can “Tone ... your leg and bottom muscles more every single time you take a step.”



28. The marketing for men’s and women’s FitFlop Footwear conveys substantially the same message. For example, Defendant states that each of its men’s FitFlop Footwear provides the same “Benefits”:

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RELIEF YOU CAN WEAR ON YOUR FEET™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- **reduce hip joint stress (up to 8%),**
- **reduce knee joint stress (up to 20%),**
- **reduce ankle joint force (up to 11%),**
- **reduce foot pressure concentration*.”²**

* * *

* When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr. David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).

29. Defendant also states that each of its women’s FitFlop Footwear provides similar “Benefits”:

FITFLOP. GET A WORKOUT WHILE YOU WALK™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- **help increase leg and bottom muscle activity (up to 30%),**
- **absorb more shock than a normal shoe (up to 22%),**
- **help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees), reduce foot pressure.”³**

* * *

² See Exhibit A attached (representative collection of Defendant’s “Benefits” advertising for men’s footwear).
³ See Exhibit B attached (representative collection of Defendant’s “Benefits” advertising for women’s footwear).

1 * When compared to a control shoe. Case studies were
2 performed on Microwobbleboard technology over a forty-eight
3 month period by Dr. David Cook, Senior Lecturer in
4 Biomechanics, and Darren James at the Centre for Human
Performance at London South Bank University (LSBU).

5 30. Defendant's print and website advertisements reinforce its health
6 benefits message by using at least one purported doctor endorsement:

7 "The FitFlop shoe is a hybrid shoe that allows a more
8 natural form of walking giving both comfort and improved
9 performance in the calf and hip muscle groups in comparison to a
training shoe."

10 - Dr. Phillip Graham-Smith

11 31. Through its labeling and advertising statements concerning its
12 FitFlop Footwear – including those referenced above – Defendant has uniformly
13 conveyed one message: that Defendant's products provide increased muscle
14 activation over traditional footwear, resulting in increased muscle toning and
15 related health benefits simply by walking in them.

16 **THERE IS NO ADEQUATE SUPPORT FOR**
17 **DEFENDANT'S DECEPTIVE REPRESENTATIONS**

18 32. Defendant claims that FitFlop Footwear's major health benefits
19 have been shown in clinical studies. For example, on its fitflop.com website,
20 Defendant states: Studies at the Centre for Human Performance at London South
21 Bank University ("LSBU Study") show that normal walking in FitFlop sandals
22 can help: (a) "increase leg and bottom muscle activity (up to 30%). (so you feel
23 less ache in your hips and knees);" (b) "absorb more shock than a normal shoe
24 (up to 22%);" (c) "help realign ground force reaction closer to your joints;" and
25 (d) "reduce foot pressure and pain from heel spurs and plantar fasciitis." See
26 FitFlop, <http://www.fitflop.com/scat/howtheywork> (last visited July 1, 2011).

27 33. Defendant also states that Dr. Philip Graham-Smith and Richard
28 Jones of Salford University independently tested the health benefits of FitFlop

1 Footwear. See FitFlop, [http://www.fitflop.com/how-they-work/research/scat/
2 researchresults/](http://www.fitflop.com/how-they-work/research/scat/researchresults/) (last visited July 1, 2011) (“Salford Study”).

3 34. None of these studies, however, is reliable scientific or clinical
4 proof. Neither the LSBU study nor the Salford Study has been published in peer-
5 review journals. Defendant also has not made either of the studies publicly
6 available, including on its website. Furthermore, the LSBU study was conducted
7 by the developers of the Microwobbleboard™ technology, Dr. David Cook and
8 Darren James.

9 35. Contrary to Defendant’s statements about the increased muscle
10 activation effect of its FitFlop Footwear, walking in Defendant’s FitFlop
11 Footwear provides no greater amount of muscle activation or exercise response
12 than walking in ordinary footwear. Indeed, clinical evidence suggests that
13 Defendant’s claims regarding the FitFlop Footwear are deceptive.

14 36. For example, two studies funded by the American Council on
15 Exercise by the Departments of Physical Therapy and Exercise and Sports
16 Science of the University of Wisconsin-La Crosse compared exercise response
17 rates and muscle activation rates from walking in three popular varieties of
18 toning shoe (referred to in the study as “fitness shoes”), against walking in
19 regular athletic shoes. The American Council on Exercise publicized the results
20 of this study on its website through a news article released in August 2010,
21 [http://www.acefitness.org/certifiednewsarticle/720/will-toning-shoes-really-give-
22 you-a-betterbody/](http://www.acefitness.org/certifiednewsarticle/720/will-toning-shoes-really-give-you-a-betterbody/) (last visited July 1, 2011).

23 37. One of these recent studies “found no evidence that walking in
24 fitness shoes had any positive effect on exercise heart rate, oxygen consumption,
25 or caloric expenditure compared to walking in a regular running shoe.” See
26 Porcari Report at 11. In fact, it found “no significant differences in muscle
27 activation levels for any of the muscles tested between any of the shoe
28 conditions.” *Id.* at 12. The “muscles tested” included muscles from the buttocks

1 (gluteus maximus), calf (gastrocnemius) and hamstring (biceps femoris) muscle
2 groups. *See id.* at 6.

3 38. The Porcari Report concluded that “wearing so called fitness shoes
4 will have no beneficial effect on exercise intensity or caloric expenditure
5 compared to wearing a regular running shoe. Additionally, there is no evidence
6 that wearing shoes with an unstable sole design will improve muscle strength and
7 tone more than wearing a regular running shoe.” *Id.* at 12.

8 39. As Dr. Porcari stated, “Don’t buy these shoes because of the claims
9 that you’re going to tone your butt more or burn more calories. That’s absolutely
10 wrong[.]” American Council on Exercise, [http://www.acefitness.org/
11 getfit/studies/toningshoes072010.pdf](http://www.acefitness.org/getfit/studies/toningshoes072010.pdf) (last visited Apr. 27, 2011).

12 40. Moreover, one published study conducted to determine the
13 effectiveness of unstable shoe construction (rocker bottom shoes) on reducing
14 pain and increasing balance in persons with knee osteoarthritis found that there
15 was no significant difference between the test group that wore an unstable shoe
16 construction and the control group in either pain reduction or increased balance.
17 Benno M. Nigg *et al.*, *Unstable Shoe Construction and Reduction of Pain in
18 Osteoarthritis Patients*, *Medicine & Science in Sports & Exercise* (2006)(peer-
19 reviewed clinical evidence).

20 41. To further reinforce the appearance that its claims are legitimate and
21 that the FitFlop Footwear is different from ordinary footwear, Defendant
22 consistently represents that its product line has “the backing of the medical
23 profession ... from top physiotherapists to leading podiatrists.” Press Release,
24 *FitFlop Shoes – Can They Be Beaten?* (Oct. 12, 2010), [http://www.openpr.com/
25 news/147560/FitFlop-Shoes-Can-They-Be-Beaten.html](http://www.openpr.com/news/147560/FitFlop-Shoes-Can-They-Be-Beaten.html) (last visited July 1,
26 2011).

27 42. This representation is deceptive. In fact, many notable physicians
28 and podiatrists do not endorse FitFlop Footwear. For example, the president of

1 the American Academy of Podiatric Sports Medicine stated that toning shoes
 2 pose “major risks, especially for adults. Creating instability, on adults especially
 3 is not a good thing.”⁴ Likewise, Lisa Callahan, a sports medicine doctor at New
 4 York’s Hospital for Special Surgery, said “there’s just nothing magical about a
 5 [toning] shoe like this.”⁵ In a Newsweek article, “Hyping Hope,” Doug Gurley,
 6 an orthopedic surgeon and sports-medicine specialist at the San Juan Regional
 7 Medical Center in Farmington, N.M., says he’s “highly suspicious” of the claim
 8 that destabilizing the foot has any health or fitness benefit.⁶

9 43. In furtherance of its deceptive advertising, Defendant also claims on
 10 its website and advertising materials that FitFlop sandals have “been approved by
 11 the American Podiatric Medical Association- APMA.” However, the APMA
 12 Seal of Acceptance only means the shoes “allow for the most normal foot
 13 function and promote quality health.” The APMA does not endorse the shoes’
 14 “toning capabilities” as Defendant’s website deceptively implies.

15 44. Even though walking in Defendant’s FitFlop Footwear offers no
 16 greater benefit in toning or muscle activation than walking in a traditional (and
 17 lower-priced) walking shoe, FitFlop Footwear has been a huge commercial
 18 success for Defendant: “FitFlop ha[s] been the top selling fitness Footwear brand
 19 since their launch a few years ago.” *See, e.g.,* Press Release, *Customers Are*
 20 *Getting Excited About FitFlops Spring 2011 Collection* (Nov. 12, 2010),
 21 *available at* [http://express-press-release.net/79/Customers-Getting-Excited-](http://express-press-release.net/79/Customers-Getting-Excited-About-FitFlops-Spring-2011-Collection-54891029.php)
 22 [About-FitFlops-Spring-2011-Collection-54891029.php](http://express-press-release.net/79/Customers-Getting-Excited-About-FitFlops-Spring-2011-Collection-54891029.php) (last visited July 1,
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24 ⁴ Amber Smith, *Can Easytone, Fitflops, Trim Treads or Other Shoes Tone Your*
 25 *Body*, Syracuse Blog (Aug. 24, 2010), http://blog.syracuse.com/cny/2010/08/can_easytone_fitflops_trimtreads_or_other_shoes_tone_your_body.html (last
 26 visited Apr. 27, 2011).

27 ⁵ *Flops That Make You Fit? ‘20/20’ Tries Out the FitFlop*, (ABC Television
 28 Broadcast July 9, 2008), *available at* http://www.youtube.com/watch?v=xaY_15HLmts (last visited Apr. 27, 2011).

⁶ Kendyl Salcito, *Hyping Hope*, Newsweek, July 26, 2007, *available at* <http://www.newsweek.com/2007/07/25/hyping-hope.html>.

1 2011). Indeed, the press release stated that the winter range of women's boots
2 offered by Defendant was "literally selling out." *Id.*

3 45. From June 2007 to July 2008, Defendant sold more than 1.5 million
4 pairs of FitFlops in the United States. *See* Eamon McNiff and Ann Varney,
5 *Flops That Make You Fit? '20/20' Tries Out the FitFlop*, ABC News, July 9,
6 2008, available at <http://abcnews.go.com/Health/story?id=5246637&page=1>
7 (last visited July 1, 2011). According to Defendant's Facebook website, over 6
8 million pairs of FitFlops have been sold since their launch in May 2007.⁷

9 46. Based upon the purported significant health benefits conveyed in its
10 marketing and advertising, Defendant is able to price FitFlop Footwear at a
11 premium to other similar "non-toning" footwear. In fact, the approximate \$60.00
12 retail price of FitFlop sandals is roughly double the price of other "non-toning"
13 flip flops sold by competitors.

14 CLASS DEFINITION AND ALLEGATIONS

15 47. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil
16 Procedure, Plaintiff Arnold brings this action on behalf of herself and members
17 of a Class defined as:

18 All persons who purchased Defendant's FitFlop Footwear
19 until the date notice is provided to the Class. Excluded from the
20 Class are Defendant and its officers, directors and employees, and
21 those who purchased FitFlop Footwear for the purpose of resale or
22 who assert claims for personal injury.

23 48. *Numerosity.* The members of the Class are so numerous that
24 joinder of all members of the Class is impracticable. Plaintiff Arnold is informed
25 and believes that the proposed Class contains thousands of purchasers of FitFlop
26 Footwear who have been damaged by Defendant's conduct as alleged herein.
27 The precise number of Class members is unknown to Plaintiff Arnold. The true

28 ⁷ *See* <http://www.facebook.com/FitFlopUSA#!/FitFlopUSA?sk=info> (last
visited July 1, 2011).

1 number of Class members is known by the Defendant, however, and thus
2 potential Class members may be notified of the pendency of this action by first
3 class mail, electronic mail, and/or published notice.

4 49. ***Existence and Predominance of Common Questions of Law and***
5 ***Fact.*** This action involves common questions of law and fact, which
6 predominate over any questions affecting individual Class members. Common
7 questions of law and fact include, but are not limited to, the following:

8 (a) whether Defendant had adequate substantiation for its claims
9 prior to making them;

10 (b) whether the claims discussed above are true, or are
11 misleading, or reasonably likely to deceive;

12 (c) whether Defendant's alleged conduct violates public policy;

13 (d) whether the alleged conduct constitutes violations of the laws
14 asserted;

15 (e) whether Defendant engaged in false or misleading
16 advertising;

17 (f) whether Plaintiff Arnold and Class members have sustained
18 monetary loss and the proper measure of that loss; and

19 (g) whether Plaintiff Arnold and Class members are entitled to
20 injunctive relief.

21 50. ***Typicality.*** Plaintiff Arnold's claims are typical of the claims of the
22 members of the Class because, *inter alia*, all Class members were injured
23 through the uniform misconduct described above, were subject to Defendant's
24 deceptive statements, including deceptive claims that accompanied each and
25 every pair of FitFlop Footwear sold. Plaintiff Arnold is advancing the same
26 claims and legal theories on behalf of herself and all members of the Class.

27 51. ***Adequacy of Representation.*** Plaintiff Arnold will fairly and
28 adequately protect the interests of the members of the Class. Plaintiff Arnold has

1 retained highly competent counsel and experienced class action attorneys to
2 represent her interests and that of the Class. Plaintiff Arnold and her counsel
3 have the necessary financial resources to adequately and vigorously litigate this
4 class action. Plaintiff Arnold has no adverse or antagonistic interests to those of
5 the Class. Plaintiff Arnold is willing and prepared to serve the Court and the
6 Class members in a representative capacity with all of the obligations and duties
7 material thereto and are determined to diligently discharge those duties by
8 vigorously seeking the maximum possible recovery for Class members.

9 52. *Superiority.* A class action is superior to other available means for
10 the fair and efficient adjudication of this controversy since individual joinder of
11 all Class members is impracticable. The damages or other financial detriment
12 suffered by individual Class members is relatively small compared to the burden
13 and expense that would be entailed by individual litigation of their claims against
14 the Defendant. It would thus be virtually impossible for the Class, on an
15 individual basis, to obtain effective redress for the wrongs done to them.
16 Furthermore, even if Class members could afford such individualized litigation,
17 the court system could not. Individualized litigation would create the danger of
18 inconsistent or contradictory judgments arising from the same set of facts.
19 Individualized litigation would also increase the delay and expense to all parties
20 and the court system from the issues raised by this action. By contrast, the class
21 action device provides the benefits of adjudication of these issues in a single
22 proceeding, economies of scale, and comprehensive supervision by a single
23 court, and presents no unusual management difficulties under the circumstances
24 here.

25 53. Unless a Class is certified, Defendant will retain monies received as
26 a result of its conduct that were taken from Plaintiff Arnold and Class members.
27 Unless a Class-wide injunction is issued, Defendant will continue to commit the
28

1 violations alleged, and the members of the Class and the general public will
2 continue to be deceived.

3 **COUNT I**

4 **Violation of Business & Professions Code §17200, et seq.**

5 54. Plaintiffs repeat and reallege the allegations contained in the
6 paragraphs above, as if fully set forth herein.

7 55. Plaintiff Rosales brings this claim individually and Plaintiff Arnold
8 brings this claim individually and on behalf of the Class.

9 56. As alleged herein, Plaintiffs have suffered injury in fact and lost
10 money or property as a result of Defendant's conduct because they purchased
11 FitFlop Footwear in reliance of Defendant's claims detailed above, but did not
12 receive a product containing the toning and other benefits detailed above.

13 57. The Unfair Competition Law, Business & Professions Code
14 §17200, et seq. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair"
15 business act or practice and any false or misleading advertising. In the course of
16 conducting business, Defendant committed unlawful business practices by, *inter*
17 *alia*, making the representations (which also constitutes advertising within the
18 meaning of §17200) and omissions of material facts, as set forth more fully
19 herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business &
20 Professions Code §§17200, et seq., 17500, et seq., California Health & Safety
21 Code §110390, et seq., 21 U.S.C. §301, et seq., and the common law.

22 58. Plaintiffs and the Class reserve the right to allege other violations
23 of law which constitute other unlawful business acts or practices. Such conduct
24 is ongoing and continues to this date.

25 59. Defendant's actions also constitute "unfair" business acts or
26 practices because, as alleged above, *inter alia*, Defendant engages in false
27 advertising, misrepresents and omits material facts regarding its FitFlop
28 Footwear, and thereby offends an established public policy, and engages in

1 immoral, unethical, oppressive, and unscrupulous activities that are substantially
2 injurious to consumers.

3 60. As stated in this Complaint, Plaintiffs allege violations of consumer
4 protection, unfair competition and truth in advertising laws, resulting in harm to
5 consumers. Defendant's acts and omissions also violate and offend the public
6 policy against engaging in false and misleading advertising, unfair competition
7 and deceptive conduct towards consumers. This conduct constitutes violations of
8 the unfair prong of Business & Professions Code §17200, *et seq.*

9 61. There were reasonably available alternatives to further Defendant's
10 legitimate business interests, other than the conduct described herein.

11 62. Business & Professions Code §17200, *et seq.*, also prohibits any
12 "fraudulent business act or practice."

13 63. Defendant's actions, claims, nondisclosures, and misleading
14 statements, as alleged in this Complaint, were false, misleading and likely to
15 deceive the consuming public within the meaning of Business & Professions
16 Code §17200, *et seq.*

17 64. Plaintiffs and other members of the Class have in fact been
18 deceived as a result of their reliance on Defendant's material representations and
19 omissions, which are described above. This reliance has caused harm to
20 Plaintiffs and other members of the Class who each purchased Defendant's
21 FitFlop Footwear. Plaintiffs and the other Class members have suffered injury in
22 fact and lost money as a result of these unlawful, unfair, and fraudulent practices.
23 The injury in fact and loss of money does not relate to any loss concerning
24 personal injury or emotional distress. Plaintiffs do not seek, individually or on
25 behalf of others similarly situated, recovery for any loss concerning personal
26 injury or emotional distress. Plaintiffs have not suffered personal injuries.

27 65. As a result of its deception, Defendant has been able to reap unjust
28 revenue and profit.

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1 66. Unless restrained and enjoined, Defendant will continue to engage
2 in the above-described conduct. Accordingly, injunctive relief is appropriate.

3 67. Plaintiff Rosales, individually, and Plaintiff Arnold Ojeda, on
4 behalf of herself, all others similarly situated, and the general public, seek
5 restitution and disgorgement of all money obtained from Plaintiffs and the
6 members of the Class collected as a result of unfair competition and all other
7 relief this Court deems appropriate, consistent with Business & Professions Code
8 §17203.

9 **COUNT II**

10 **Violations of the Consumers Legal Remedies Act –**
11 **Civil Code §1750 et seq.**

12 68. Plaintiffs repeat and reallege the allegations contained in the
13 paragraphs above, as if fully set forth herein.

14 69. Plaintiff Rosales brings this claim individually and Plaintiff Arnold
15 brings this claim individually and on behalf of the Class.

16 70. This cause of action is brought pursuant to the Consumers Legal
17 Remedies Act, California Civil Code §1750, et seq. (the “Act”). Plaintiffs are
18 consumers as defined by California Civil Code §1761(d). Defendant’s FitFlop
19 Footwear is a good within the meaning of the Act.

20 71. Defendant violated the Act by engaging in the following practices
21 proscribed by California Civil Code §1770(a) in transactions with Plaintiffs and
22 the Class which were intended to result in, and did result in, the sale of FitFlop
23 Footwear:

24 (5) Representing that [FitFlop Footwear has] . . .
25 approval, characteristics, . . . uses [or] benefits . . . which [it does]
26 not have

27 * * *

28 (7) Representing that [FitFlop Footwear is] of a particular
standard, quality or grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [FitFlop Footwear has] been supplied in accordance with a previous representation when [it has] not.

72. Defendant violated the Act by representing through its advertisements FitFlop Footwear as described above when it knew, or should have known, that the representations and advertisements were unsubstantiated, false and misleading.

73. Pursuant to California Civil Code §1782(d), Plaintiffs and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

74. Pursuant to §1782 of the Act, by letter dated May 4, 2011, Defendant was notified in writing by certified mail of the particular violations of §1770 of the Act, which notice demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act.

75. Defendant has failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiffs further seek claims for actual, punitive and statutory damages, as appropriate.

76. Defendant’s conduct is malicious, fraudulent and wanton.

77. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing that this action has been commenced in the proper forum.

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BLOOD HURST & O'REARDON, LLP

COUNT III

Breach of Express Warranty

1
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3 78. Plaintiffs repeat and reallege the allegations contained in the
4 paragraphs above, as if fully set forth herein.

5 79. Plaintiff Rosales brings this claim individually and Plaintiff Arnold
6 brings this claim individually and on behalf of the Class.

7 80. Plaintiffs, and each member of the Class, formed a contract with
8 Defendant at the time Plaintiffs and the other members of the Class purchased
9 FitFlop Footwear. The terms of that contract include the promises and
10 affirmations of fact made by Defendant on its FitFlop Footwear packaging and
11 product hang tags, and through the FitFlop Footwear marketing campaign, as
12 described above. This product packaging and advertising constitutes express
13 warranties, became part of the basis of the bargain, and is part of a standardized
14 contract between Plaintiffs and the members of the Class on the one hand, and
15 Defendant on the other.

16 81. All conditions precedent to Defendant's liability under this contract
17 have been performed by Plaintiffs and the Class.

18 82. Defendant breached the terms of this contract, including the
19 express warranties, with Plaintiffs and the Class by not providing FitFlop
20 Footwear that could provide the benefits described above. Such express
21 warranties breached by Defendant include the FitFlop Footwear representations
22 set forth above in ¶¶4, 9-10, 15, 17-18, 21-24, and 26-30, as well as in Exhibits A
23 and B attached to this Complaint.

24 83. As a result of Defendant's breach of its contract, Plaintiffs and the
25 Class have been damaged in the amount of the purchase price of the FitFlop
26 Footwear they purchased.

27
28

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PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment:

A. Certifying the Class as requested herein;

B. Awarding Plaintiffs and the proposed Class members economic damages related to the price of the FitFlop Footwear purchased (and not for any damages related to physical and/or emotional injuries);

C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiffs and the proposed Class members;

D. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendant to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs;

G. Awarding pre-judgment and post-judgment interest at the legal rate; and

H. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable

Dated: June 27, 2013

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LESLIE E. HURST (178432)
THOMAS J. O'REARDON II (247952)

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Executed on June 27, 2013.

s/ Timothy G. Blood
TIMOTHY G. BLOOD

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BLOOD HURST & O'REARDON, LLP

EXHIBIT A



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SHOES & CLOGS > FF SUPERTONE M (LEATHER)

FF Supertone M (Leather)

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>reduce hip joint stress (up to 8%),</p> <p>reduce knee joint stress (up to 20%),</p> <p>reduce ankle joint force (up to 11%),</p> <p>reduce foot pressure concentration**.</p>				
<p>FITFLOP footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them, and/or</p> <p>b) experience any discomfort as a result of wearing them, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				
<p>**Please visit our research page for more details</p>				



£90.00



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SHOES & CLOGS > FF SUPERTONE™ M (NUBUCK)

FF Supertone™ M (Nubuck)

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
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<p>**Please visit our research page for more details</p>				



£90.00



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SHOES & CLOGS > MEN'S GOGH™ (LEATHER)

Men's Gogh™ (Leather)

Product Info	Benefits	Sizing	Technology	Care
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RELIEF YOU CAN WEAR ON YOUR FEET™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- reduce hip joint stress (up to 8%),
- reduce knee joint stress (up to 20%),
- reduce ankle joint force (up to 11%),
- reduce foot pressure concentration**.

FITFLOP footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

- a) have any health concerns which you suspect may be aggravated by wearing them, and/or
- b) experience any discomfort as a result of wearing them, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.

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£85.00



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SHOES & CLOGS > MEN'S GOGH™ (SUEDE)

Men's Gogh™ (Suede)

Product Info	Benefits	Sizing	Technology	Care
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RELIEF YOU CAN WEAR ON YOUR FEET™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

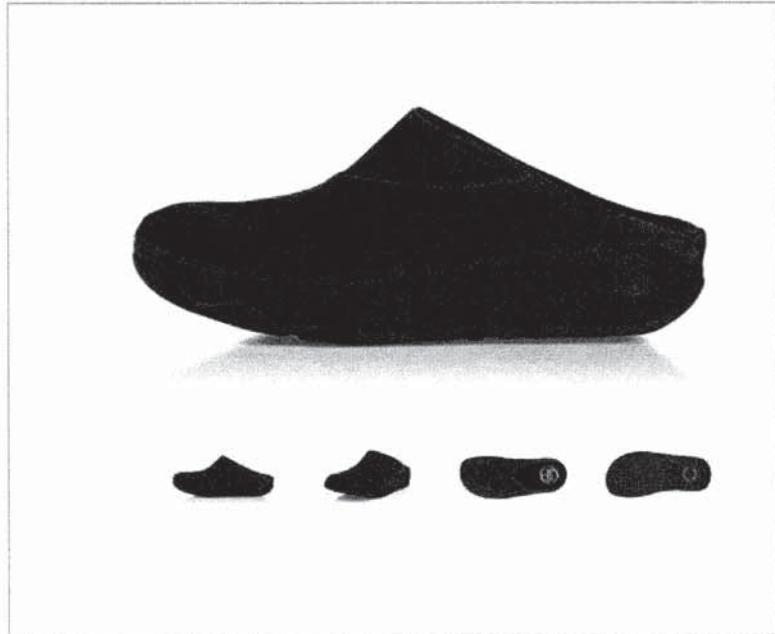
- reduce hip joint stress (up to 8%),
- reduce knee joint stress (up to 20%),
- reduce ankle joint force (up to 11%),
- reduce foot pressure concentration**.

FITFLOP footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

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**Please visit our research page for more details



£75.00



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SANDALS > DASS

Dass

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
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<p>**Please visit our research page for more details</p>				



£50.00

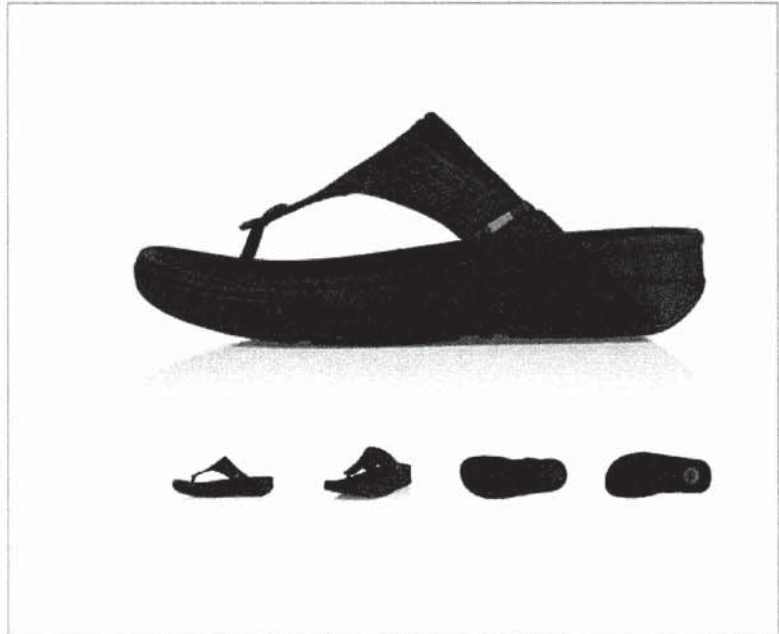


GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SANDALS > DASS

Dass

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
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<p>**Please visit our research page for more details</p>				



£50.00

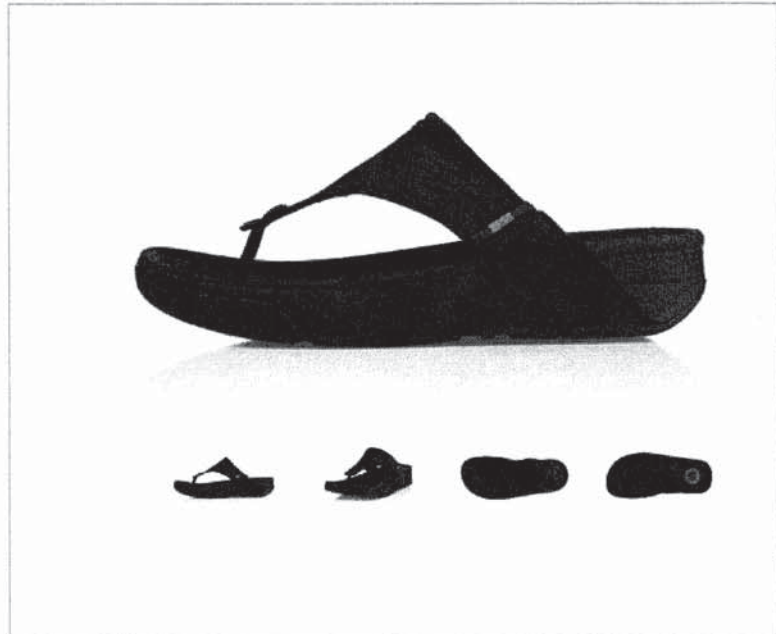


GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SANDALS > DASS

Dass

Product Info	Benefits	Sizing	Technology	Care
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<p>**Please visit our research page for more details</p>				



£50.00

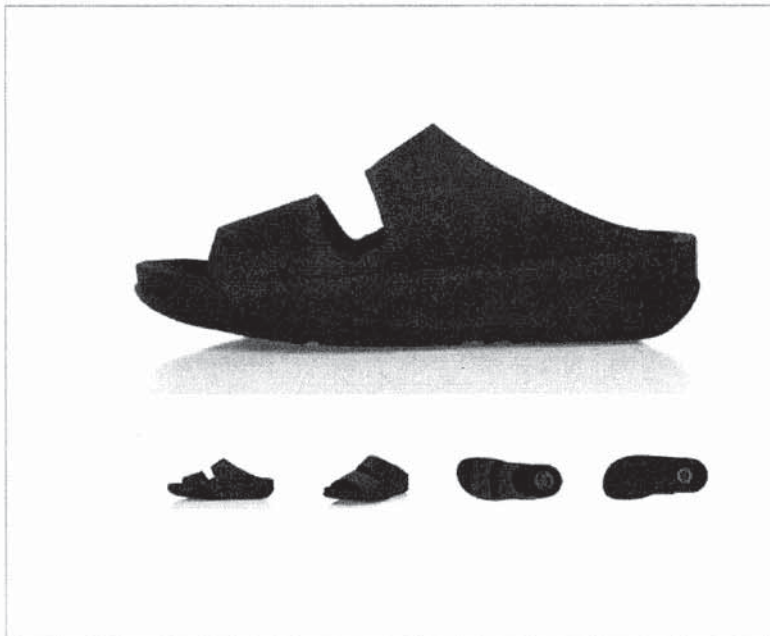


GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SANDALS > MEN'S GOGH™ SLIDE

Men's Gogh™ Slide

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
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<p>**Please visit our research page for more details</p>				



£85.00



GET A WORKOUT WHILE YOU WALK™

HOME > MENS > SANDALS > FREEWAY™

Freeway™

Product Info	Benefits	Sizing	Technology	Care
RELIEF YOU CAN WEAR ON YOUR FEET™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>reduce hip joint stress (up to 8%),</p> <p>reduce knee joint stress (up to 20%),</p> <p>reduce ankle joint force (up to 11%),</p> <p>reduce foot pressure concentration**.</p>				
<p>FITFLOP footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them, and/or</p> <p>b) experience any discomfort as a result of wearing them, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				
<p>**Please visit our research page for more details</p>				



£60.00

EXHIBIT B



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > GOGH™ SLIDE LEATHER

Gogh™ Slide Leather

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- help increase leg and bottom muscle activity (up to 30%),
- absorb more shock than a normal shoe (up to 22%),
- help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),
- reduce foot pressure.

FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

- a) have any health concerns which you suspect may be aggravated by wearing them,
- b) experience any discomfort as a result of wearing them, and/or
- c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.

*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).



£70.00

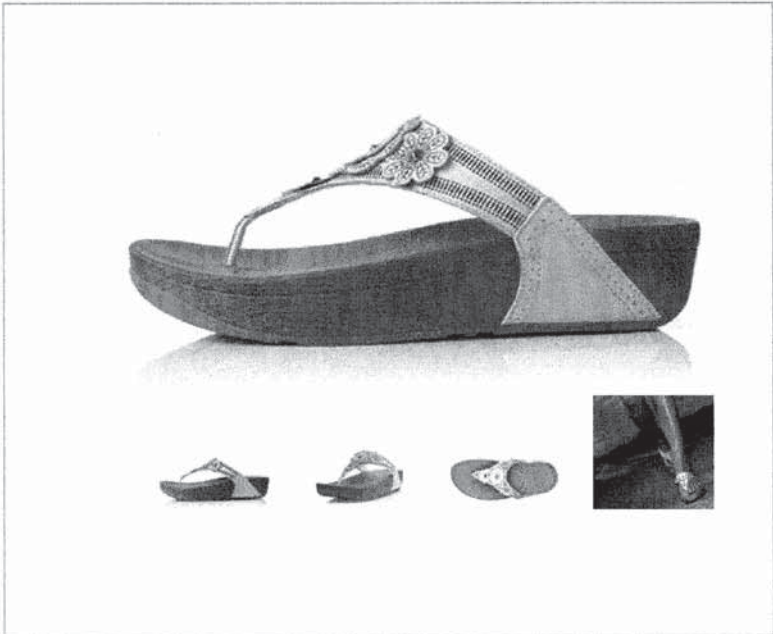


GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > FIORELLA™

Fiorella™

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£75.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > HOOPER™

Hooper™

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

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- absorb more shock than a normal shoe (up to 22%),
- help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),
- reduce foot pressure.

FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

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- b) experience any discomfort as a result of wearing them, and/or
- c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.

*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).



£60.00

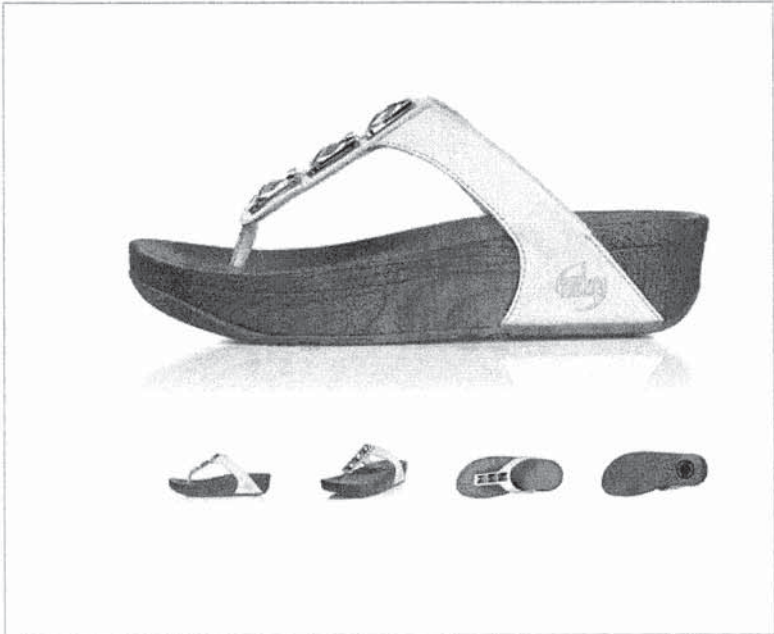


GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > PIETRA™ (LEATHER)

Pietra™ (Leather)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£60.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > PIETRA™

Pietra™

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- help increase leg and bottom muscle activity (up to 30%),
- absorb more shock than a normal shoe (up to 22%),
- help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),
- reduce foot pressure.

FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

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- b) experience any discomfort as a result of wearing them, and/or
- c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.

*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).



£50.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > ROCK CHIC™

Rock Chic™

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£180.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > WALKSTAR™ 3 (PATENT)

Walkstar™ 3 (Patent)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£45.00

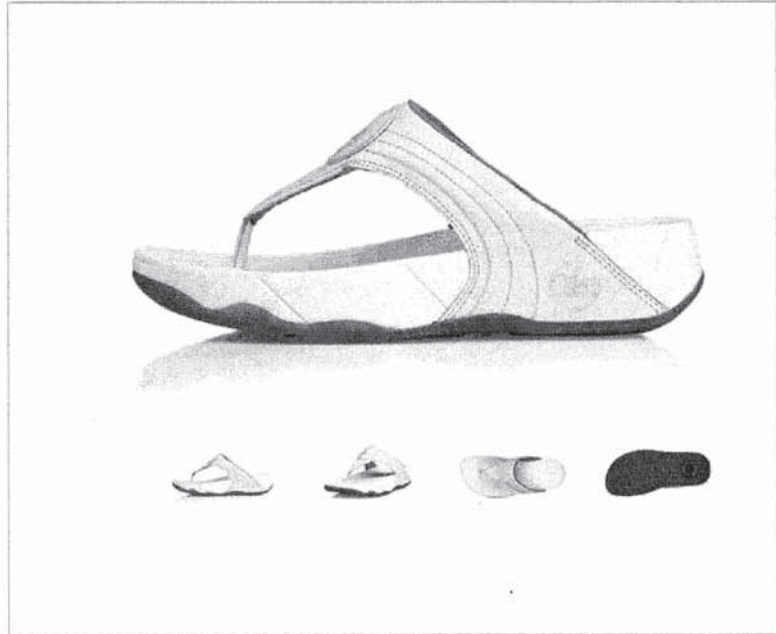


GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > WALKSTAR™ 3 (LEATHER)

Walkstar™ 3 (Leather)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£45.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > OASIS™ 2

Oasis™ 2

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£40.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > WALKSTAR™

Walkstar™

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

- help increase leg and bottom muscle activity (up to 30%),
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- help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),
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FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;

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£36.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SANDALS > HYKA™

Hyka™

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<ul style="list-style-type: none"> help increase leg and bottom muscle activity (up to 30%), absorb more shock than a normal shoe (up to 22%), help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees), reduce foot pressure. 				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <ul style="list-style-type: none"> a) have any health concerns which you suspect may be aggravated by wearing them, b) experience any discomfort as a result of wearing them, and/or c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear. 				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£60.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SHOES & CLOGS > FF SUPERTONE™ (SUEDE)

FF Supertone™ (Suede)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<ul style="list-style-type: none"> help increase leg and bottom muscle activity (up to 30%), absorb more shock than a normal shoe (up to 22%), help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees), reduce foot pressure. 				
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<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£80.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SHOES & CLOGS > FF SUPERTONE™ (LEATHER)

FF Supertone™ (Leather)

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:

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£85.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SHOES & CLOGS > HAPPY GOGH™

Happy Gogh™

Product Info	Benefits	Sizing	Technology	Care
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FITFLOP. GET A WORKOUT WHILE YOU WALK™

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*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).



£80.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SHOES & CLOGS > GOGH™ (LEATHER)

Gogh™ (Leather)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
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<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£85.00

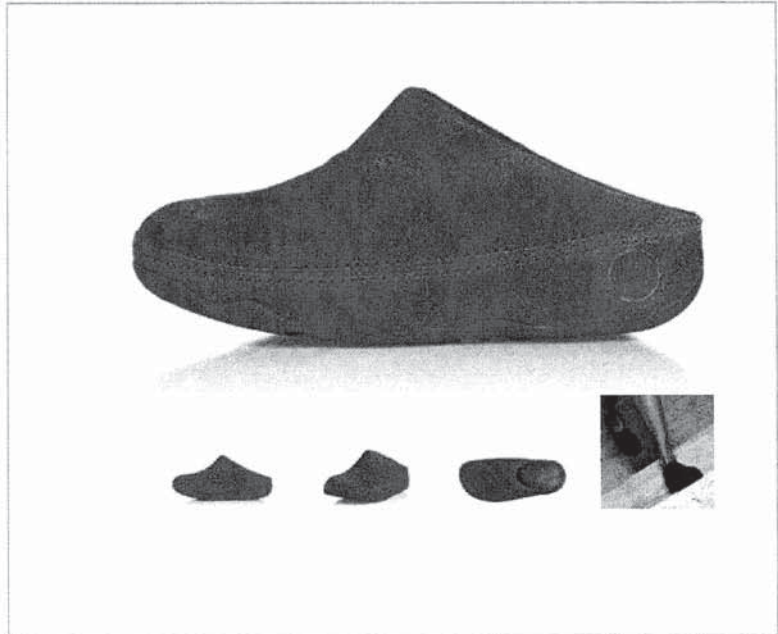


GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > SHOES & CLOGS > GOGH™ (SUEDE)

Gogh™ (Suede)

Product Info	Benefits	Sizing	Technology	Care
FITFLOP. GET A WORKOUT WHILE YOU WALK™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop sandals* can help:				
<p>help increase leg and bottom muscle activity (up to 30%),</p> <p>absorb more shock than a normal shoe (up to 22%),</p> <p>help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees),</p> <p>reduce foot pressure.</p>				
<p>FITFLOP™ footwear has the potential to increase muscle activity in terms of duration and workload and instigates a more active foot profile. As such, we recommend that all FITFLOP footwear be used progressively to avoid excessive muscle soreness. If you;</p> <p>a) have any health concerns which you suspect may be aggravated by wearing them,</p> <p>b) experience any discomfort as a result of wearing them, and/or</p> <p>c) are pregnant, please consult a medical practitioner before starting or continuing to wearing FitFlop footwear.</p>				
<p>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</p>				



£65.00



GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > BOOTS > ORIGINAL MUKLUK™

Original Mukluk™

Product Info	Benefits	Sizing	Technology	Care
FitFlop. Get a workout while you walk™				
FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop footwear* can help:				
<ul style="list-style-type: none"> help increase leg and bottom muscle activity (up to 30%), absorb more shock than a normal shoe (up to 22%), help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees), reduce foot pressure. 				
See Benefits for Women				
<small>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</small>				

£135.00





GET A WORKOUT WHILE YOU WALK™

HOME > WOMENS > BOOTS > LEATHER MUKLUK™

Leather Mukluk™

Product Info	Benefits	Sizing	Technology	Care
<p>FitFlop. Get a workout while you walk™</p> <p>FitFlop footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk. Studies at the Centre for Human Performance at LSBU show that normal walking in FitFlop footwear* can help:</p> <p>help increase leg and bottom muscle activity (up to 30%), absorb more shock than a normal shoe (up to 22%), help realign ground force reaction closer to your joints (so you feel less ache in your hips and knees), reduce foot pressure.</p> <p>See Benefits for Women</p> <p><small>*When compared to a control shoe. Case studies were performed on Microwobbleboard technology over a forty-eight month period by Dr David Cook, Senior Lecturer in Biomechanics, and Darren James at the Centre for Human Performance at London South Bank University (LSBU).</small></p>				

£150.00



EXHIBIT C

BLOOD HURST & O'REARDON, LLP

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3 LESLIE E. HURST (178432)
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7 MILBERG LLP
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10 New York, New York 10119
11 Telephone: (212) 594-5300
12 Facsimile: (212) 868-1229
13 jpollack@milberg.com

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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

16 ARIANNA ROSALES, On Behalf of
17 Herself, All Others Similarly Situated and
the General Public,

18 Plaintiff,

19 v.

20 FITFLOP USA, LLC,

21 Defendant.

Case No.:

CLASS ACTION

AFFIDAVIT OF THOMAS J. O'REARDON II
PURSUANT TO CALIFORNIA CIVIL CODE
§1780(d)

DEMAND FOR JURY TRIAL

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I, THOMAS J. O'REARDON II, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Blood Hurst & O'Reardon LLP, one of the counsel of record for plaintiff in the above-entitled action.

2. Defendant FitFlop USA, LLC has done and is doing business in San Diego County. Such business includes the marketing and sale of its FitFlop Footwear. Furthermore, plaintiff Arianna Rosales resides in, and purchased FitFlop Footwear in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of May, 2011, at San Diego, California.



THOMAS J. O'REARDON II

BLOOD HURST & O'REARDON, LLP