

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LESLIE HEDGES, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
FINN COMFORT VERTRIEBS GMBH, a	)	<b>JURY TRIAL DEMANDED</b>
German corporation,	)	
	)	
Defendant.	)	

**CLASS ACTION COMPLAINT**

Plaintiff Leslie Hedges (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her counsel, brings this Class Action Complaint against Defendant Finn Comfort Vertriebs GmbH (“Defendant” or “Finn Comfort”). Plaintiff, on behalf of herself and all others similarly situated, complains and alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

**I. NATURE OF THE ACTION**

1. This is a consumer protection class action based on the false advertising of Defendant’s Finnamic shoes and sandals (“Shoes” or “Products”). Defendant claims the Products provide significant health benefits for all consumers who wear them. These claimed health benefits are the only reason a consumer would purchase the Shoes. Defendant’s advertising claims, however, are false, misleading, and reasonably likely to deceive the public.

2. Through an extensive, integrated, and widespread nationwide marketing campaign, Defendant promises that the Products will improve posture and gait, tone and strengthen muscles, and help alleviate back, hip, leg and foot problems. Defendant asserts that

the design of the Shoes will provide these significant health benefits by activating the body's natural functions as consumers walk.

3. For example, Defendant's website claims the Shoes "may prove significantly therapeutic"<sup>1</sup> by reflecting "the natural shape of a healthy foot,"<sup>2</sup> and help consumers "strengthen muscles by encouraging comfortable walking over longer periods of time."<sup>3</sup> Specifically, the website boasts that the Shoes act "like little fitness trainers"<sup>4</sup> for consumers' feet and help "increase your strength and stamina."<sup>5</sup> Further, third-party websites add that walking in the Shoes "improves posture, promotes natural gait, and encourages greater fitness."<sup>6</sup> As a result, the health benefits message in the advertising of the Products will be referred to as Defendant's "health benefit representations."

4. According to scientific tests, however, wearing the Shoes provides no additional health benefits and does not increase stamina or strength when compared to normal shoes.

5. Defendant's advertising and marketing campaign is designed to induce consumers to purchase the Products because of their reliance upon the accuracy of the deceptive health benefits message. In the end, however, as a result of the misleading messages conveyed by its marketing campaign, Defendant has caused consumers to purchase items that do not perform as advertised.

6. Plaintiff brings this action on behalf of herself and other similarly situated consumers who have purchased the Products to halt the dissemination of these false, misleading

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<sup>1</sup> <http://www.finncomfort.com/side-finnamic-sandal-blacksilver-nappanappa-1567-900697.html> (last visited August 19, 2015).

<sup>2</sup> <http://www.finncomfort.com/andros-finnamic-sandal-black-plisseelight-1575-345099.html> (last visited August 19, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.finncomfort.com/watford-mens-shoe-black-pamama-1160-131099.html> (last visited August 19, 2015).

<sup>5</sup> <http://www.finncomfort.com/andros-finnamic-sandal-black-plisseelight-1575-345099.html> (last visited August 19, 2015).

<sup>6</sup> <http://www.happyfeet.com/strengthen.aspx> (last visited August 19, 2015).

and deceptive advertising messages, correct the false and misleading perception Defendant has created in the minds of consumers, and obtain redress for those who have purchased the Products. Plaintiff alleges that Defendant's conduct violates the Magnuson-Moss Warranty Act, breaches express warranties, constitutes unjust enrichment, and violates the Illinois Consumer Fraud and Deceptive Business Practices Act as well as consumer fraud laws similar to that of Illinois under the facts particular to this case.

## **II. JURISDICTION AND VENUE**

7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and the members of the Class are citizens of States different from Defendant.

8. This Court has personal jurisdiction over Defendant because Defendant conducts business in Illinois. Defendant has marketed, promoted, distributed, and sold the Products in Illinois, and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible. Further, Defendant's website allows consumers to search by state and zip code to locate retail stores that sell its Products, including stores in this District.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while she resided in this judicial District. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

### **III. PARTIES**

#### ***Plaintiff***

10. Plaintiff is a citizen of the State of Illinois. At all relevant times, she resided in Chicago, Illinois. In or around March 2014, Plaintiff saw Defendant's representations by reading the Products' description online. In reliance on the health benefit representations, Plaintiff purchased a pair of Finn Comfort's Shoes for approximately \$265.00. By purchasing the falsely advertised Shoes, Plaintiff suffered injury-in-fact and lost money.

11. The Shoes do not provide the promised benefits. Had Plaintiff known the truth about Defendant's misrepresentations and omissions at the time of her purchase, Plaintiff would not have purchased the Products.

#### ***Defendant***

12. Defendant Finn Comfort Vertriebs GmbH is a German corporation with its principal place of business located at Walter-Tron-Str. 2, 97437 Haßfurt, Freistaat Bayern, Germany. Defendant Finn Comfort Vertriebs GmbH manufactures the Products in Germany, and sells its Products in the United States in retail stores nationwide, via third-party websites, and through its distributor, California-based Kanner Corporation, Inc. ("Kanner"). Kanner serves as a distributor for Finn Comfort Vertriebs GmbH in the United States and is referred to as Finn Comfort USA on Defendant's U.S. website.<sup>7</sup>

### **IV. FACTUAL ALLEGATIONS**

#### ***The Toning Shoes Products***

13. Finn Comfort distributes, markets, and/or sells various shoes and sandals, including the Products, to consumers in Illinois and throughout the United States. Finn Comfort

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<sup>7</sup> See <http://www.finncomfort.com/contact.aspx> (last visited August 19, 2015).

also maintains a website that allows consumers to search by state and zip code to locate retail stores nationwide where its Products can be purchased. Further, Finn Comfort sells its Products via a variety of third-party retailers' websites, such as PlanetShoes.com and Amazon.com.

14. The Products' price ranges from approximately \$245.00 to \$375.00. The following is a screen shot of one of the Products:



15. Since the Shoes' launch, Defendant has consistently conveyed the message to consumers throughout the United States, including Illinois, that the Shoes will act like a little fitness trainer, improve posture and gait, tone and strengthen muscles, as well as relieve stress in feet, knees, hips, and spine, simply by wearing the Products.

16. On third-party websites, Defendant includes the following product description:

Finn Comfort Finnamic shoes are personal trainers for your feet. Gentle on joints, knees, disks and spine, they help tone and strengthen muscles to make you fit for the day's demands. The Finn Comfort Finnamic Samara 1560 is set in a handcrafted leather upper, with adjustable straps for a perfect fit. Step-by-step the convex heel design of this Finn Comfort sandal helps you increase stamina and strength. The rocker sole promotes the natural heel-to-toe rolling motion, propelling you forward when you walk, while providing both stability and comfort while you stand. Optimum balance - the broad, flat and

stable mid-section of the Finn Comfort Finnamic Samara relieves unnecessary strain on the foot while stabilizing the entire body.<sup>8</sup>

While this product description is included on Amazon.com, one of the world's largest retailers, various other websites selling the Products in the United States include the same type of description.<sup>9</sup>

17. As more fully set forth below, the scientific evidence indicates no health benefits are achieved simply from wearing the Shoes. Furthermore, the Shoes can actually increase the probability for injury in some consumers. Defendant's health benefit representations, therefore, are false, misleading and deceptive.

18. Defendant's website indicates that the health benefits are a result of a "lightly curved" convex rocker sole design which "encourages a smooth and natural heel-to-toe rolling motion" ("Rocking Effect"). According to Defendant, this Rocking Effect strengthens and tones muscles as well as increases stamina.

19. Defendant's false and deceptive representations are set forth in the following representative ad, found on its website and third-party retailers' websites:

### Finn Comfort's Finnamic Collection



Finnamic's rocker sole promotes the natural heel-to-toe rolling motion, propelling you forward when you walk, while providing both stability and comfort while you stand. The broad, flat and stable mid-section relieves unnecessary strain on the foot while stabilizing the entire body.

Walking in Finnamic every day improves posture, promotes natural gait, and encourages greater fitness. Finnamic shoes are calfskin lined and feature the Finn Comfort soft footbed for ideal cushioning and shock-absorption.

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<sup>8</sup> *Finn Comfort Finnamic Samara Sandals*, Amazon.com, <http://www.amazon.com/Finn-Comfort-Samara-1560-Sandal/dp/B0015TIJ08> (last visited August 19, 2015).

<sup>9</sup> See *Finn Comfort Finnamic Recife 2907*, Planetfeet.com, <http://www.planetshoes.com/item/finn-comfort-finnamic-recife-2907/9108/483> (last visited August 19, 2015).

20. Other ads also tout the Rocking Effect: “The convex heel design of the Samara helps you increase stamina and strength. The rocker sole promotes the natural heel-to-toe rolling motion, propelling you forward when you walk, while providing both stability and comfort while you wear this women’s sandal.”<sup>10</sup>

VIEW LARGER

RECENTLY VIEWED



FINN COMFORT  
SPARKS

\$265.00



FINN COMFORT  
IKEBUKRO

\$365.00

NEW



FINN COMFORT  
CEYLON

\$375.00

NEW

Finn Comfort Finnamic shoes are personal trainers for your feet. Gentle on your joints, knees, disks and spine, they help tone and strengthen muscles to make you fit for the day's demands. The Finn Comfort Finnamic Samara 1560 is set in a handcrafted leather upper, with adjustable straps for a perfect fit. The convex heel design of the Samara helps you increase stamina and strength. The rocker sole promotes the natural heel-to-toe rolling motion, propelling you forward when you walk, while providing both stability and comfort while you wear this women's sandal. Optimum balance - the broad, flat and stable mid-section of the Finn Comfort Finnamic Samara relieves unnecessary strain on the foot while stabilizing the entire body

21. Even though numerous studies have found that a Rocking Effect design does not improve posture or gait, tone or strengthen muscles, or help alleviate back, hip, leg, or foot problems, Defendant continues to make representations on its publicly-available website which repeats and reinforces their fraudulent health claims.

22. Defendant’s Shoes’ design incorporates similar rocker sole technology as Skechers Shape-Ups and Masai Barefoot Technology’s shoes,<sup>11</sup> which utilize rounded shaped soles (“Rocker Soles”) to force a pronounced heel to toe walking action that those companies

<sup>10</sup> See *Finn Comfort Finnamic Samara Sandals*, Harrys-shoes.com, <http://www.harrys-shoes.com/Brand/FINN%20COMFORT/Womens/SAMARA%20%20Mud/Color&refURL=GC S> (last visited August 19, 2015).

<sup>11</sup> See “MBT, Finnamic and Rolling Soft could all be merchandised on the same table” Edward Kanner, Kanner Corporation, Inc., *European Accent*, Footwearplus, <http://footwearplusmagazine.com/2010/01/qa/european-accent/> (last visited August 19, 2015).

claimed improved health and toned muscles.<sup>12</sup> The most common types of Rocker Soles are mild rocker, negative heel, and heel-to-toe soles. Defendant advertises that its Shoes contain mild Rocker Soles with a rockered heel design and rockered forefoot section (*see* figure below).<sup>13</sup>



***Scientific Studies Confirm That the Products are Not Effective And Defendant's Health Benefits Message is False and Deceptive***

23. Contrary to Defendant's representations, however, independent studies published at least as early as 2004 have found that its Shoes' design is *not* effective in providing the represented health benefits.

24. Studies, reports, and news stories have conclusively determined "[t]here is as yet no solid independent evidence that proves it is possible to strengthen specific musculature by

<sup>12</sup> <http://www.finncomfort.com/andros-finnamic-sandal-black-plisseelight-1575-345099.html> (last visited August 19, 2015).

<sup>13</sup> <http://www.sunsetshoesonline.net/media/finnamic.jpg> (last accessed August 19, 2015).

wearing a particular type of shoe.”<sup>14</sup> Moreover, James S. Fell, MBA, Certified Strength and Conditioning Specialist, stressed in an article that “toning comes from strenuous effort of the larger ‘fast twitch’ muscle fibres, and this can only be done via heavy resistance training.” Further, Fell also noted that “[w]alking only works the smaller ‘slow twitch’ muscle fibres, and giving those lower-body muscles some extra work with a rocking shoe isn’t going to do much about the way they look.”<sup>15</sup>

25. A study funded by the American Council on Exercise by the Departments of Physical Therapy and Exercise and Sports Science of the University of Wisconsin-La Crosse compared exercise response rates and muscle activation rates from walking in three popular varieties of Rocker Soles shoes (substantially similar to Defendant’s Products) against walking in regular athletic shoes.<sup>16</sup> As Dr. Porcari, a professor in the Department of Exercise and Sport Science at the University of Wisconsin-La Crosse, states, “[d]on’t buy these shoes because of the claims that you’re going to tone your butt more or burn more calories. That’s absolutely wrong.”<sup>17</sup> Dr. Porcari reiterated that the shoes are ineffective:

They feel different, and that’s why when people first wear them they’re probably going to be sore because you’re using different muscles. But if you wear any sort of abnormal shoes that you’re not used to wearing, your muscles are going to get sore. Is that going to translate into toning your butt, hamstrings and calves? Nope. Your body is just going to get used to it.<sup>18</sup>

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<sup>14</sup> *Masai Barefoot Technology – Does it really work?*, The Sports Injury Doctor, <http://www.sportsinjurybulletin.com/archive/masai-barefoot-technology> (last visited August 19, 2015).

<sup>15</sup> *Can rocker shoes really help you lose weight?*, <http://www.chatelaine.com/health/fitness/can-rocker-shoes-really-help-you-lose-weight/> (last visited August 19, 2015).

<sup>16</sup> John Porcari, et al., *Will Toning Shoes Really Give You a Better Body?* <http://www.acefitness.org/certifiednewsarticle/720/will-toning-shoes-really-give-you-a-betterbody/> (last visited August 19, 2015).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

26. Further, Sandy Connery, a clinical pedorthist, past President of the Pedorthic Association of Canada, and owner of Foot Health Center in Calgary, Canada, expressed concern that the Rocker Sole shoes are “unsafe to walk in.”<sup>19</sup> In the same article, Dr. Reed Ferber, an assistant professor of biomechanics at the University of Calgary and director of the Running Injury Clinic, stated that Rocker Sole shoes are not designed increase caloric burn or tone muscles. Dr. Ferber further noted,

But it’s not just something people should go out and buy[.] . . . In order to effectively use these shoes as a medical intervention you need to seek professional advice, first from a physiotherapist or other specialist. Also, note that these shoes are not a magic bullet for relieving pain. They can be part of an overall recipe of ingredients to prevent and treat injuries. Don’t think that the shoe is going to solve all your problems.

27. In addition to making false affirmative assertions, Defendant fails to disclose that its Shoes may cause injury, a concern prevalent among members of the scientific community who have studied such shoes. For example, a USA Today article from 2010 states in part:

[A] growing number of doctors are warning that toning shoes don’t deliver on their marketing promises and could cause injuries by, among other things, changing a person’s gait, or way of walking.

Claims that toning shoes can significantly contribute to a person’s fitness are “utter nonsense,” says Barbara de Lateur, distinguished service professor of physical medicine and rehabilitation at Johns Hopkins University’s School of Medicine in Baltimore.

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David Davidson, national president of the American Academy of Podiatric Sports Medicine, says the shoes basically make adults learn to walk, or run, all over again by changing their gait. That’s a

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<sup>19</sup> *Can rocker shoes really help you lose weight?*, <http://www.chatelaine.com/health/fitness/can-rocker-shoes-really-help-you-lose-weight/> (last visited August 19, 2015).

“scary” prospect for someone with a “borderline problem” they might not know about.<sup>20</sup>

28. Defendant’s Shoes cause the same sort of problems. As that story indicated, “[t]oning shoes try to replicate the gentle, heel-to-toe motion of walking on a soft, sandy beach. . . . Remember the Earth Shoe phenomenon in the 1970s?”<sup>21</sup> As such, Defendant’s Rocking Effect design, allegedly made to encourage a smooth and natural heel-to-toe rolling motion, is equally as dangerous and ineffective as the other shoes examined in the USA Today story.

29. Thus, the Shoes have significant drawbacks which Defendant has omitted from its advertising. Specifically, because the Shoes are designed to change a user’s “walking motion” or “gait,” they are unusable for users with preexisting problems.

30. Anecdotal evidence also indicates that injuries can occur from the Shoes and a wearer’s changed gait:

Bryan Markinson, chief of podiatric medicine at Mount Sinai School of Medicine in New York, says some of his patients who are “not in the greatest of shape” have inflamed their Achilles tendons while wearing toning shoes. People thinking of buying them, he says, should begin an “active stretching program” or else risk injury.<sup>22</sup>

31. Defendant has reaped significant profits by leading consumers to believe that scientific studies prove that the Shoes improve posture and gait, tone and strengthen muscles, as well as increase stamina and strength. Consumers would not have purchased the Products had they known the truth: the Shoes do not provide many of the benefits described by Defendant and

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<sup>20</sup> Michael McCarthy, *A Revolutionary Sneaker, or Overhyped Gimmick?*, USA Today (June 30, 2010, 4:22 PM), [http://usatoday30.usatoday.com/sports/2010-06-30-toning-shoes\\_N.htm](http://usatoday30.usatoday.com/sports/2010-06-30-toning-shoes_N.htm) (last visited August 19, 2015).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

in fact increases the likelihood that some users will suffer serious injuries, such as injuries to their Achilles tendon.

***The Impact of Defendant's Wrongful Conduct***

32. Wearing Defendant's Shoes does not strengthen muscles, improve posture or gait, or increase stamina or strength.

33. Despite studies showing that the Shoes are ineffective, Defendant conveyed and continues to convey that the Products provide health benefits.

34. Defendant possesses specialized knowledge regarding the design and effects of the Products and is in a superior position to know whether the Shoes work as advertised.

35. Specifically, Defendant knew, but failed to disclose, that the Products do not provide the health benefits represented and that well-conducted, clinical studies have found the elements of the Products' design are ineffective at providing the represented results. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's false and deceptive representations. Plaintiff purchased the Products during the Class period and in doing so, read and considered the Products' advertisements and based her decision to purchase the Products on the health benefit representations. Defendant's health benefit representations and omissions were a material factor in influencing Plaintiff's decision to purchase the Products.

36. Plaintiff and the Class would not have purchased the Products had they known Defendant's health benefit statements were false and misleading, and that studies have found the Products' design to be ineffective for the represented health benefits.

37. As a result, Plaintiff and the Class members have been injured in fact in their purchases of the Shoes in that they were deceived into purchasing products that do not perform as advertised.

38. Defendant, by contrast, reaped enormous profit from its false marketing and sale of the Shoes.

#### **V. CLASS ALLEGATIONS**

39. Plaintiff brings Counts I – III as set forth below, on behalf of herself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class against Defendant:

##### **National Class**

All consumers who, within the applicable statute of limitations, purchased Finn Comfort Finnamic products (the “National Class”).

Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors; those persons who purchased Defendant’s Products for the purpose of resale; all persons who make a timely election to be excluded from the National Class; and the judge to whom this case is assigned and any immediate family members thereof.

40. Plaintiff brings Count IV as set forth below, on behalf of herself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class against Defendant for violations of Illinois state laws and laws of other states that are materially similar to the laws of Illinois:

##### **Multi-State Class**

All persons who, within the applicable statute of limitations under their respective state’s consumer fraud act,<sup>23</sup> purchased Finn Comfort Finnamic products (the “Multi-State Class”).

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<sup>23</sup> The States in the Consumer Fraud Multi-State Class are limited to those States with similar consumer fraud laws under the facts of this case: California (Cal. Bus. & Prof. Code §17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 ICLS § 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased Defendant's Products for the purpose of resale; all persons who make a timely election to be excluded from the Multi-State Class; and the judge to whom this case is assigned and any immediate family members thereof.

41. In the alternative, Plaintiff brings Count IV as set forth below, on behalf of herself and all other similarly situated Illinois residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**Illinois Resident Class**

All Illinois residents who, within the applicable statute of limitations, purchased Finn Comfort Finnamic products (the "Illinois Resident Class").

Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Defendant's Products for the purpose of resale; all persons who make a timely election to be excluded from the Illinois Resident Class; and the judge to whom this case is assigned and any immediate family members thereof.

42. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of her claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

43. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. On information and belief, there are hundreds, if not thousands of consumers who have been damaged by Defendant's wrongful conduct as alleged herein. The precise number of Class members and their addresses are presently unknown to Plaintiff, but may be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by

recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

44. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- (a) Whether Defendant's representations constitute written warranties, and whether Defendant breached those warranties;
- (b) Whether the representations discussed herein that Defendant made about the Products were or are misleading, or likely to deceive;
- (c) Whether Plaintiff and the Class members were deceived by Defendant's representations;
- (d) Whether Defendant's conduct constitutes violations of the laws asserted herein;
- (e) Whether Plaintiff and Class members have been injured and the proper measure of their losses as a result of those injuries;
- (f) Whether Plaintiff and Class members are entitled to an award of compensatory/actual damages; and
- (g) Whether the Plaintiff and Class members are entitled to injunctive or declaratory relief.

45. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform misconduct described above and were subject to Defendant's deceptive and misleading conduct.

46. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other Class members she seeks to represent; she has retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intends to

prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiff and her counsel.

47. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class members as a whole.

48. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## **VI. CLAIMS ALLEGED**

### **COUNT I**

#### **Violation of the Magnuson-Moss Warranty Act (On Behalf Of The National Class)**

49. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 – 48 above as if fully set forth herein.

50. Plaintiff brings this cause of action individually and behalf of the members of the National Class against Defendant.

51. Finn Comfort's Finnamic Shoes are consumer products as defined in 15 U.S.C. § 2301(1).

52. Plaintiff and the Class Members are consumers as defined in 15 U.S.C. § 2301(3).

53. Finn Comfort is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

54. In connection with the sale of its Shoes, Finn Comfort issued written warranties as defined in 15 U.S.C. § 2301(6) by making the express representations and warranties described herein.

55. Finn Comfort expressly warranted that the Products would, among other things, improve posture and gait, tone and strengthen muscles, increase stamina and strength, and reduce stress in the knees, hips and feet.

56. Finn Comfort breached written warranties by failing to provide Products which could provide the benefits described above. Further, Finn Comfort's Shoes do not conform to the express warranties regarding the advertised health benefits because each of the express warranties is false, misleading, and unsubstantiated, and there is no competent reliable evidence supporting any of its written warranties.

57. By reason of Finn Comfort's breach of warranties, Finn Comfort violated the statutory rights due to Plaintiff and the Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, thereby damaging Plaintiff and the Class members.

58. Affording Finn Comfort a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. At the time Finn Comfort sold its Shoes, Finn

Comfort should have known, or was reckless in not knowing, of its misrepresentations concerning the health benefits, but nonetheless failed to rectify the situation and/or disclose these material omissions. Under these circumstances, the remedies available under any information settlement procedure would be inadequate and any requirements that Plaintiff resort to an informal dispute resolution procedure and/or afford Finn Comfort a reasonable opportunity to cure its breach of written warranties are excused and thereby deemed satisfied.

59. Plaintiff and the Class Members were injured as a direct and proximate result of Finn Comfort's breach because they would not have purchased these Shoes if the true facts had been known.

**COUNT II**  
**Breach of Express Warranty**  
**(On Behalf Of The National Class)**

60. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 48 as if fully set forth herein.

61. Plaintiff brings this cause of action individually and behalf of the members of the National Class against Defendant.

62. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and other members of the Class purchased the Products. The terms of that contract include the promises and affirmations of fact made by Finn Comfort through its marketing campaign, as described above. The Products' advertising constitutes express warranties and became part of the basis of the bargain, on which Plaintiff and members of the Class relied. These terms are part of a standardized contract between Plaintiff and members of the Class on the one hand and Finn Comfort on the other.

63. All conditions precedent to Finn Comfort's liability under this contract have been performed by Plaintiff and the Class.

64. Finn Comfort expressly warranted that the Products would, among other things, improve posture and gait, tone and strengthen muscles, increase stamina and strength, and reduce stress in the knees, hips and feet.

65. Finn Comfort breached an express warranty by failing to provide the Products which could provide the benefits described above.

66. As a result of Finn Comfort's breach of its express warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Shoes that they purchased.

**COUNT III**  
**Unjust Enrichment**  
**(On Behalf Of The National Class)**

67. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 – 48 above as if fully set forth herein.

68. Plaintiff brings this cause of action individually and on behalf of the members of the National Class against Defendant.

69. Finn Comfort sold the Shoes based on untrue and misleading advertising, including failure to disclose material facts, as stated more fully above.

70. By selling Shoes that did not perform as advertised, Finn Comfort received a benefit from Plaintiff and Class members to which it was not entitled.

71. Finn Comfort knowingly appreciated and accepted this benefit, which resulted and continues to result in an inequity to Plaintiff.

72. Finn Comfort's retention of such benefit violates the fundamental principles of justice, equity, and good conscience.

73. As a result of Finn Comfort's unjust enrichment, Plaintiff and Class members sustained damages in an amount to be determined at trial. Plaintiff seeks full disgorgement and restitution of Finn Comfort's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT IV**

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act  
(On Behalf Of The Multi-State And The Illinois Resident Classes)**

74. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 – 48 above as if fully set forth herein.

75. Plaintiff brings this Count individually and on behalf of the other members of the Multi-State and Illinois Resident Classes defined above.

76. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 502/2, *et seq.* ("the Act"), like the consumer fraud acts of numerous other states across the nation, prohibits unfair and deceptive acts or practices in connection with any trade or commerce, including, among other things, "the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact, . . . whether any person has in fact been misled, deceived or damaged thereby."

77. Plaintiff and the Class were injured by Defendant's deceptive misrepresentations, concealments and omissions. These misrepresentations, concealments and omissions were material, and deceived Plaintiff and the Class.

78. Defendant does business in Illinois, sells and distributes its Shoes in Illinois, and engages in deceptive acts and practices in connection with the sale of its Shoes in Illinois and elsewhere in the United States.

79. Defendant created and caused the health benefit claims to be published to consumers in connection with the sale of the Products.

80. The Products that Plaintiff and the Class purchased are “merchandise” as that term is defined under the Act.

81. Defendant misrepresents and deceptively conceals, suppresses and/or omits material information known to Defendant as set forth above concerning the Products which has caused damage and injury to Plaintiff and the Class.

82. Namely, Defendant fails to reveal that the Products do not work as advertised, or even that studies exist contradicting Defendant’s express claims.

83. Defendant’s deceptive acts are occurring in a course of conduct involving trade and commerce in Illinois and throughout the United States.

84. Defendant’s deceptive acts proximately caused actual injury and damage to Plaintiff and the Class.

85. Defendant intended Plaintiff and all Class members to rely on its deceptive acts.

86. Defendant’s conduct constituted a consumer fraud under the Illinois Consumer Fraud Act and similar laws in other states.

**VII. JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims in this Complaint so triable.

**VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully requests that the Court enter an Order awarding the following relief:

- (a) Declaring that this action is a proper class action; certifying the Class as requested herein, designating Plaintiff as Representative for all Classes; and appointing the undersigned as Class Counsel;
- (b) Awarding compensatory and actual damages, including restitution and disgorgement of Defendant's revenues to Plaintiff and the other Class members generated from the unlawful practices set forth herein;
- (c) Enjoining Defendant from continuing the unlawful practices set forth herein;
- (d) Awarding statutory damages to Plaintiff and the other Class members, as provided by the applicable consumer fraud laws;
- (e) Awarding attorneys' fees and costs to Plaintiff and the other members of the Class; and
- (f) Such other and further relief as the Court deems just and proper.

Date: August 20, 2015

Respectfully submitted,

By: /s/ Joseph J. Siprut

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