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CENTRAL DISTRICT OF CALIFORNIA

BY: CMJ DEPUTY

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THERESE MURPHY, an individual,

Plaintiff,

vs.

SKECHERS USA, INC., a Delaware
Corporation., and DOES 1-100,

Defendant.

CASE NO.: 2:23cv08641 CBM (RAOx)

FOURTH AMENDED COMPLAINT FOR:

1. **UNPAID WAGES AND OVERTIME
(California Labor Code)**
2. **WAITING TIME PENALTY FOR
NONPAYMENT OF WAGES
(California Labor Code)**
3. **UNPAID WAGES AND OVERTIME
(Illinois Minimum Wage Law)**
4. **WAITING TIME PENALTY FOR
NONPAYMENT OF WAGES
(Illinois Wage Payment And
Collections Act)**
5. **WRONGFUL DISCHARGE – PUBLIC
POLICY**
6. **DISCRIMINATION/HARASSMENT
UNDER FEHA**
7. **FAILURE TO TAKE STEPS TO
PREVENT DISCRIMINATION**
8. **VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION
17200**
9. **VIOLATION OF AGE
DISCRIMINATION IN EMPLOYMENT
ACT (ADEA)**
10. **CIVIL PENALTIES – PRIVATE
ATTORNEY GENERAL ACT (PAGA)**
11. **BREACH OF CONTRACT**
12. **VIOLATION OF FLSA - OVERTIME**

DEMAND FOR JURY TRIAL

NATURE OF ACTION

1. Plaintiff Therese Murphy ("Plaintiff") brings this action against Skechers U.S.A., Inc., ("Defendant" or "Skechers") for age discrimination, unpaid wages, and statutory penalties. Plaintiff alleges an age discrimination claim under California's Fair Employment and Housing Act ("FEHA") and under the Age Discrimination in Employment Act, as amended, ("ADEA"). Plaintiff alleges claims for unpaid wages under California law, Illinois law, the Fair Labor Standards Act ("FLSA"), and under a Sales Representative Commission Agreement, a written contract between Plaintiff and Defendant. Plaintiff further alleges a representative action under California Labor Code Private Attorney General Act ("PAGA") on behalf of the State of California for violations committed against herself and other aggrieved employees.

SUMMARY OF CLAIMS

2. Defendant is a California corporation headquartered in Manhattan Beach, California, and at all relevant times was engaged in interstate business through manufacturing, wholesale, and resale of shoes and apparel. Plaintiff lived in Illinois throughout her employment with Defendant, and she was employed by Defendant as a salesperson in the Women's Sport Division from 1997 to 2022 years. From 2020 to 2022, Plaintiff worked as a Key Account Executive.

3. As a Key Account Executive, Plaintiff was responsible for wholesaling Defendant's merchandise to third-party retailers, for example, Macy's/Finish Line and Shoe Carnival. Plaintiff worked on a commission basis and pursuant to a commission agreement. The relevant commission agreement, titled Sales Representative Commission Agreement, is attached hereto **Exhibit 1** and incorporated herein by this reference.

4. During her employment, Defendant classified Plaintiff as an "exempt" employee under the "outside sales exemption" and, consequently, did not guarantee a minimum wage or pay overtime wage for overtime hours worked. The outside sales exemption applies to employees who (among other requirements) engage in regular and customary travel outside of a home office or place of business. Plaintiff stopped engaging

1 in regular and customary travel following March 2020, the beginning of the COVID-19
2 pandemic, and did not meet the requirements of the outside sales exemption.

3 5. Plaintiff was a top performer and excelled at her job. She was also a woman
4 over the age of 60 working in a youth-oriented sector of the fashion industry. On
5 September 7, 2022, Defendant terminated Plaintiff's employment over the phone. At the
6 time, Defendant informed Plaintiff that the decision to terminate her employment was
7 motivated by a corporate restructuring. This was a lie and a pretext. In August 2022, before
8 the firing, Defendant's Senior Vice President of Sales Peter Calichman and Defendant's
9 Global Head of Human Resources Leslie Riggs met in Ms. Riggs' office in Manhattan
10 Beach, California, made and finalized the decision to terminate Plaintiff's employment, and
11 fabricated a pretextual basis for the termination to be communicated to Plaintiff.

12 6. According to Mr. Calichman, the purportedly "real" reason for the termination
13 of Defendant's employment was her "attitude". In reality, Defendant terminated Plaintiff's
14 employment the month before she turned 63 based on her age. Following the termination
15 of Plaintiff's employment, Defendant failed to pay Plaintiff commissions owed to her as
16 wages under her commission agreeemnt in the amount of \$109,000. Plaintiff has asserted
17 claims for age discrimination, unpaid commissions, and unpaid wages arising from her
18 misclassification.

19 7. **Age Discrimination:** Plaintiff has alleged causes of action against
20 Defendant for age discrimination under the ADEA and under FEHA. In this case, there is
21 a sufficient nexus to California to apply FEHA because (among other reasons) Defendant's
22 wrongful conduct, i.e. the unlawful decision to terminate Plaintiff's, occurred within the
23 State of California, the unlawful conduct was ratified by Defendant's Global Head of
24 Human Resources in Manhattan Beach, California, and the unlawful conduct was
25 executed by a human resources director based in California. *See Campbell v. Arco*
26 *Marine, Inc.* (1996) 42 Cal.App.4th 1850; *Roger-Vasselin v. Marriott International, No.*
27 *C04-4027* (N.D. Cal. July 18, 2006).

28 8. **Unpaid Commissions:** Plaintiff has alleged causes of action for unpaid

1 commissions owed at and after her termination under Illinois statutory law, California
2 statutory law, and under the parties' contract. Illinois law applies because Plaintiff was
3 domiciled in Illinois throughout her employment with Defendant. California law applies, at
4 a minimum, to the periods of time that Plaintiff was physically located within the State and
5 working within the State of California, i.e. approximately three to five weeks per year.

6 9. **Misclassification:** Plaintiff alleges unpaid wages based on Plaintiff's
7 misclassification as an exempt employee starting in March 2020 under Illinois law,
8 California law, and FLSA. Illinois law applies because Plaintiff was domiciled in Illinois
9 throughout her employment. California law applies, at a minimum, to the periods of time
10 that Plaintiff was physically located and working within the State of California, i.e. three to
11 five weeks per year. See *Sullivan v. Oracle* (2011) 51 Cal.4th 1191.

12 **JURISDICTION AND VENUE**

13 10. Plaintiff filed this action against Defendant on November 21, 2022, in the
14 Superior Court of the State of California., County of Los Angeles. On October 13, 2023,
15 and following the addition of a cause of action to the Complaint for Defendant's violation
16 of the ADEA, Defendant removed the action to the United States District Court for the
17 Central District of California. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and
18 1441(a) (Federal Question Jurisdiction) based on Plaintiff's cause of action under the
19 ADEA.

20 11. Venue is proper in the Central District of California because all Defendants
21 reside in the State of California, one resides in this District, because a substantial part of
22 the events or omissions giving rise to the claim occurred in this District, and because the
23 action was removed from the Superior Court for the County of Los Angeles, which is
24 located within this District.

25 **PARTIES**

26 12. Plaintiff is a 64-year-old woman, a natural person, and is domiciled in and a
27 resident of Maricopa County, Arizona. She resided in the State of Illinois throughout her
28 employment with Defendant. As a condition and requirement of her employment, Plaintiff

1 traveled to California for lengthy periods of time each year, including but not limited to,
2 regular and repeated travel to California to preview new products for each season,
3 attend sales conferences, and participate in buy meetings. As an example, in 2022,
4 Plaintiff was scheduled by Defendant to spend 35 days physically present and working in
5 California. In 2022, she spent approximately 21 days physically present and working in
6 the State of California for buy meetings and sales conferences before her employment
7 was terminated mid-year.

8 13. Defendant is a corporation organized and existing under the laws of the
9 state of Delaware, with its principal place of business in the County of Los Angeles, State
10 of California, at 228 Manhattan Beach Blvd., Suite 200, Manhattan Beach, California
11 90266. Defendant is an employer in the State of Illinois. Defendant has substantial ties to
12 and performs substantial business in the State of Illinois including, but not limited to,
13 marketing, distributing, and selling its footwear and products to retailers and consumers
14 located in Illinois. Skechers maintains an online presence in Illinois and allows Illinois
15 consumers to order products directly from its primary and official website,
16 www.skechers.com, and have the products shipped to their home addresses in Illinois or,
17 in the alternative, pick up the products from Skechers stores located in Illinois.

18 14. Skechers employs persons who reside in the State of Illinois to work on its
19 behalf and to further its economic and business interests. Skechers understands that it is
20 subject to Illinois law with respect to Illinois wage and hour law and it takes affirmative
21 steps to control and limit its risk under Illinois wage and hour law. For example,
22 Defendant provided Plaintiff with a "Severance Agreement and General Release". The
23 Severance Agreement and General Release expressly stated that it applied to the "Illinois
24 Wage Payment and Collection Act" and the "Illinois Minimum Wage Law". The parties did
25 not enter into the proposed Severance Agreement and General Release.

26 15. At all times relevant hereto, Skechers conducted regular and sustained
27 business operations in Los Angeles County, California. In addition, the decisions to
28 misclassify Plaintiff as an exempt employee and the decision to terminate Plaintiff's

1 employment occurred within California. Defendant is qualified to and doing business in
2 the State of California, and may be served in this State through its registered agent:
3 Philip Paccione, 228 Manhattan Beach Blvd., Suite 200, Manhattan Beach, California
4 90266.

5 16. Plaintiff is ignorant of the true names and capacities of the defendants sued
6 under the fictitious names of Does 1 through 100 ("Doe Defendants"). Plaintiff will amend
7 this Complaint to show their true names and capacities when the same have been
8 ascertained. Plaintiff is informed and believes that each of the fictitiously named Doe
9 Defendants is legally responsible in some manner for the occurrences alleged and that
10 Plaintiff's injuries and damages, as alleged, were proximately caused by these Doe
11 Defendants' actions.

12 17. Doe Defendants are referred to, collectively, in this Complaint as
13 "Defendants". Upon information and belief, Defendants were the alter egos, divisions,
14 affiliates, subsidiaries, parents, principals, related entities, co-conspirators, authorized
15 agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other
16 and Does 1 through 50. Plaintiff is informed and believes and thereon alleges that at all
17 times pertinent hereto, each Defendant was the agent and employee of each of its co-
18 Defendants, and in doing the things described herein, was acting within the course and
19 scope of his/her authority as such agent and employee, and each Defendant ratified and
20 approved the acts of his/her agents and employees. Defendants were the "employers"
21 and "joint employers" of Plaintiff.

22 **STATEMENT OF FACTS**

23 18. Therese Murphy started working for Skechers in 1997.

24 19. From 1997 to 1999, Ms. Murphy worked as the Territory Manager for the
25 Midwest. In 2000, Skechers elevated Ms. Murphy to the role of Key Account Manager for
26 Skechers' Women's Sport Division.

27 20. Ms. Murphy worked as Skechers' Key Account Manager for Women's
28 Sport's Division from 2000 to 2022, and until she was terminated from employment by

1 Skechers based on what Skechers alleged was a corporate “reorganization.”

2 21. During Ms. Murphy’s employment with Skechers, period, she won
3 numerous performance-based awards, including the Rookie of the Year Award, The
4 Ralph Vendetti Salesperson of the Year Award, and The President’s Award. Ms. Murphy
5 never received a negative performance review during her employment with Skechers.
6 Ms. Murphy was employed by Skechers pursuant to a written “Sales Representative
7 Commission Agreement”, which is attached hereto as **Exhibit 1** and incorporated herein
8 by this reference.

9 22. As the Key Account Manager for Skechers’ Women’s Sport Division, Ms.
10 Murphy was responsible for Skechers’ accounts for Macy’s, Kohl’s, Shoe Carnival, Finish
11 Line, Famous Footwear and DSW. In or around 2016, Ms. Murphy’s supervisor told her
12 that they were taking away her accounts with Famous Footwear and DSW because
13 Skechers’ wanted a “deeper bench”.

14 23. In or around 2016, Skechers reassigned the Famous Footwear account and
15 the DSW account from Ms. Murphy to Doug Kelly, a man who was younger than Ms.
16 Murphy. Mr. Kelly was discharged within a year after the reassignment for performance-
17 related issues. Following Mr. Kelly’s termination, Skechers reassigned the Famous
18 Footwear account and the DSW account to Pete Calichman, another man who was
19 younger than Ms. Murphy.

20 24. In or around 2016, Ms. Murphy’s superiors began to make more frequent
21 comments regarding her age and her future separation from employment with Skechers,
22 for example, questions about when Ms. Murphy “planned to retire” and statements of
23 “surprise” that she had the “stamina” to outperform younger employees.

24 25. On September 6, 2022, Ms. Murphy received a note from her direct
25 supervisor Pete Calichman stating that he needed to “touch base” by phone. On
26 September 7, Ms. Murphy and Mr. Calichman spoke over the phone. Mr. Calichman told
27 Ms. Murphy that the phone call was being recorded, that her position was being
28 “eliminated,” and that Melissa McKay from Skechers’ human resources department was

1 on the phone and would walk her through the separation. Mr. Calichman then hung up
2 the phone.

3 26. Ms. McKay, who had never met Ms. Murphy before this phone call, told Ms.
4 Murphy that there had been a "reorganization" that eliminated her position. As Ms.
5 Murphy came to discover, the "reorganization" involved divvying up her three accounts
6 among three sales employees. In reality, the termination was motivated by Ms. Murphy's
7 age and the "reorganization" that eliminated her position was an artifice and pretext used
8 to accomplish this unlawful objective.

9 27. Unbeknownst to Plaintiff, in August 2022, Defendant's Senior Vice
10 President of Sales Peter Calichman and Defendant's Global Head of Human Resources
11 Leslie Riggs met in Ms. Riggs' office in Manhattan Beach, California, finalized the
12 decision to terminate Plaintiff's employment, and agreed to lie to Plaintiff about the
13 reason that she was being fired. Mr. Calichman's explanation for the pretext given to
14 Plaintiff was that it was out of respect for her years of service and, further, that the real
15 reason Ms. Murphy was terminated was due to her "attitude". The truth is that Defendant
16 fired Plaintiff because of her age.

17 28. Over the past ten years Skechers has engaged in a pattern and practice of
18 terminating older employees, i.e., those who do not "fit" in the box of sales youth culture.
19 For example, and before Ms. Murphy was terminated, Skechers had engaged in a pattern
20 and practice of eliminating Ms. Murphy's other senior and experienced colleagues both
21 directly and through artifices including Charlie Owen and Ana Dragicevich.

22 29. Ms. Murphy satisfies both the disparate treatment and disparate impact
23 elements of age discrimination under the FEHA. Ms. Murphy was over the age 40 (she
24 was 62 years old at the time of termination) and a member of a protected class; (2) she
25 suffered an adverse employment action (termination/"layoff"); (3) she never received a
26 negative performance review before her termination; and (4) she was the only person in
27 her department who was terminated in September 2022, and her accounts were
28 reassigned to substantially younger employees.

30. Skechers has also engaged in violations of California's Labor Code affecting other California outside salespersons. Specifically, Skecher's continued to classify Plaintiff and all of its other outside sales staff as "exempt" even though, starting in March 2020, they ceased performing all outside sales activities and no longer qualified for the exemption. During this period, and while she was geographically located within the State of California, Plaintiff worked in excess of 8 hours per day, and forty hours per week, and was never compensated in accordance with applicable law. Upon and after separation from employment, and up until the present, Defendant has failed to compensate Plaintiff for all wages due and owing, including overtime wages and commission wages.

FEHA ALLEGATIONS

31. Complaint alleges causes of action under California's Fair Employment and Housing Act. Plaintiff has obtained a right to sue notice issued by the Department of Fair Employment and Housing and therefore exhausted administrative remedies under FEHA and satisfied all pre-filing requirements for this action.

PAGA ALLEGATIONS

32. On November 3, 2022, Plaintiff filed a claim with the California Labor and Workforce Development Agency (hereafter, "LWDA") and provided a copy by certified mail to Defendant. The LWDA did not respond and Plaintiff has exhausted Plaintiff's administrative remedies and, pursuant to Labor Code section 2699.2, is authorized to pursue Plaintiff's PAGA claims in this court.

ADEA ALLEGATIONS

33. Plaintiff filed timely charges of discrimination with the Equal Employment Opportunity Commission (“EEOC”). Plaintiff received a right to sue notice from the EEOC on June 20, 2023, and has brought a cause of action for violation of the Age Discrimination in Employment Act (“ADEA”) within ninety days of its receipt. Plaintiff has exhausted all her administrative remedies that are prerequisites to bringing this action.

FIRST CAUSE OF ACTION

**UNPAID WAGES AND OVERTIME
(California Labor Code)
(Against all Defendants)**

34. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

35. Under Labor Code §§ 204, 215, 216, 218.5, 510, 1194, 1194.2, 1197, 1199, and the applicable IWC Wage Order, it is unlawful for an employer to suffer or permit an employee to work without paying wages for all hours worked. "Hours worked" is defined to include the time an employee is suffered or permitted to work, whether or not required to do so. At all relevant times, Defendant has failed to pay Plaintiff for all hours worked and/or has regularly and consistently maintained policies and practices of refusing to pay Plaintiff for all hours worked.

36. **Unpaid Regular Wages:** Plaintiff should have received regular wages according to the hours worked during Plaintiff's employment. Defendant owes Plaintiff regular wages and has failed and refused, and continues to fail and refuse, to pay Plaintiff the amounts owed as regular wages.

37. **Unpaid Overtime Wages:** Plaintiff was entitled to overtime compensation for all overtime hours worked during and after Plaintiff's employment. During Plaintiff's employment, Defendant failed to pay Plaintiff for all hours worked, including Plaintiff's overtime hours, and Plaintiff is therefore entitled to the amounts owed as overtime wages.

38. **Unpaid Commissions:** Plaintiff was entitled to all commissions earned during and after Plaintiff's employment. Defendant refuses to pay Plaintiff commission wages earned prior to the termination of her employment with Defendant. Defendant has failed to compensate Plaintiff any commissions earned from September 1, 2022 through the present.

39. **Liquidated Damages:** Plaintiff is entitled to liquidated damages under Labor Code section 1194.2(a). Plaintiff is separately entitled to liquidated damages under the Fair Labor and Standards Act ("FLSA"), 29 USC § 260.

1 40. As a direct and proximate result of Defendant's conduct, as set forth herein,
2 Plaintiff has sustained damages and been deprived of wages and overtime compensation
3 that are owed in amounts to be proven at trial. Plaintiff is entitled to recovery of such
4 amounts, plus interest, liquidated damages, and attorneys' fees and costs.

5 **SECOND CAUSE OF ACTION**
6 **WAITING-TIME PENALTY FOR NONPAYMENT OF WAGES**
7 **(California Labor Code)**
8 **(Against All Defendants)**

9 41. Plaintiff incorporates by reference all other paragraphs of this Complaint as
10 if they were re-alleged and set forth herein.

11 42. Plaintiff separated from employment with Defendant as further alleged
12 herein. Upon separation, and within the statutorily required timeline, Defendant willfully
13 failed to pay Plaintiff all wages when due, including owed overtime and commissions
14 earned.

15 43. Plaintiff seeks waiting time penalties as authorized by law, including Labor
16 Code sections 203 and 218.

17 **THIRD CAUSE OF ACTION**
18 **UNPAID WAGES AND OVERTIME**
19 **(Illinois Minimum Wage Law)**
20 **(Against all Defendants)**

21 44. Plaintiff incorporates by reference all other paragraphs of this Complaint as
22 if they were re-alleged and set forth herein.

23 45. Plaintiff alleges that Illinois wage and hour law applies to all of the above
24 referenced time periods, including but not limited to, the Illinois Minimum Wage Law
25 ("IMWL") and the Illinois Wage Payment and Collection Act ("IWPCA"). This cause of
26 action is directed at the application, and violation, of Illinois law and not intend to replace
27 or supersede any other cause of action or claim asserted herein.

28 46. Skecher's classified Plaintiff as an "exempt" employee throughout her
employment. Plaintiff was improperly classified as an "exempt" employee, including within
the applicable statute of limitations and including after March 2020. Under the IMWL,

1 Plaintiff was therefore entitled to be paid at an overtime rate for each hour worked in
2 excess of 40 hours each work week at one and one-half times her regular rate.

3 47. Plaintiff was regularly permitted, encouraged, and/or required to work in
4 excess of 40 hours per week but was not compensated at the required one and one-half
5 times her regular hourly rate for such overtime work. This resulted in Plaintiff being paid
6 at a rate less than one and one-half times her regular rate of pay for hours worked over
7 forty in a work week, in violation of the IMWL.

8 48. By failing to pay overtime compensation due to Plaintiff, Defendant willfully,
9 knowingly, and/or recklessly violated the IMWL which requires overtime compensation of
10 one and one-half times the regular rate.

11 49. As a direct and proximate result of Defendant's conduct, as set forth herein,
12 Plaintiff has sustained damages and been deprived of wages and overtime compensation
13 that are owed in amounts to be proven at trial. Plaintiff is entitled to recovery of such
14 amounts, plus interest, liquidated damages, and attorneys' fees and costs.

15
16 **FOURTH CAUSE OF ACTION**
17 **WAITING TIME PENALTY FOR NON-PAYMENT OF WAGES**
(Illinois Wage Payment And Collections Act)
(Against All Defendants)

18 50. Plaintiff incorporates by reference all other paragraphs of this Complaint as
19 if they were re-alleged and set forth herein.

20 51. Plaintiff alleges that Illinois wage and hour law applies to all of the above
21 referenced time periods, including but not limited to, the Illinois Minimum Wage Law
22 ("IMWL") and the Illinois Wage Payment and Collection Act ("IWPCA"). This cause of
23 action is directed at the application, and violation, of Illinois law and not intend to replace
24 or supersede any other cause of action or claim asserted herein.

25 52. Defendant's conduct towards Plaintiff constitutes violations of the IWPCA.
26 Defendant's actions were willful and not in good faith. This cause of action arises from
27 Defendant's violation of the IWPCA, 820 ILCS 115. 820 ILCS §115/5 provides that "every
28 employer shall pay the final compensated of separated employees in full, a the time of

1 the separation, if possible, but in no case later than the next regularly scheduled payday
2 for such employee.”

3 53. The IWPCA at 820 ILCS115/14, further provides “Any employee not timely
4 paid wages, final compensation, or wage supplements by his or her employer as required
5 by this Act shall be entitled to recover through a claim filed with the Department of Labor
6 or in a civil action, but not both, the amount of any such underpayments and damages of
7 5% of the amount of any such underpayments for each month following the date of
8 payment during which such underpayments remain unpaid. In a civil action, such
9 employee shall also recover costs and all reasonable attorney's fees.”

10 54. Defendant failed to pay Plaintiff all wages and compensation owed,
11 including overtime hours worked and commission payments due, within the timeframe
12 required by law. Plaintiff is entitled to recovery of such amounts, plus interest, liquidated
13 damages, penalties, and attorneys' fees and costs.

14 **FIFTH CAUSE OF ACTION**
15 **WRONGFUL DISCHARGE – PUBLIC POLICY**
16 **(Against All Defendants)**

17 55. Plaintiff incorporates by reference all other paragraphs of this Complaint as
18 if they were re-alleged and set forth herein.

19 56. Plaintiff was employed by Defendant. Defendant discharged Plaintiff from
20 employment. As further alleged herein, a substantial motivating reason for Plaintiff's
21 discharge was in violation of public policy.

22 57. Defendant's discharge of Plaintiff was a substantial factor in causing
23 Plaintiff harm, including the harm suffered by Plaintiff by the discharge, among other
24 damages.

25 **SIXTH CAUSE OF ACTION**
26 **DISCRIMINATION/HARASSMENT UNDER FEHA**
27 **(Against All Defendants)**

28 58. Plaintiff incorporates by reference all other paragraphs of this Complaint as
if they were re-alleged and set forth herein.

59. At the time of the adverse actions mentioned herein, Plaintiff was over the

1 age of 40.

2 60. This action is brought pursuant to the California Fair Employment Practices
3 Act, sections 12940(a) and 12941 which prohibits discrimination against any individual
4 over the age of 40 based on their age. Defendant discriminated against Plaintiff with
5 Plaintiff's age being a motivating factor in violation of FEHA. This was consistent with
6 Defendant's practice of demoting, not promoting, laying-off, and forcing out older age
7 employees and replacing them, or promoting over them with younger, inexperienced
8 employees.

9 61. There exists a pattern and practice of Defendant of discriminating against
10 employees over the age of 40 with policies that disparately impact them, including the
11 recent "reorganizations", lay-offs, demotions, opportunities to promote, and constructive
12 terminations. As a direct and foreseeable and proximate result of Defendant's
13 discriminatory acts, Plaintiff has suffered and continues to suffer substantial losses in
14 earnings and job benefits, and has suffered, and continues to suffer, humiliation,
15 embarrassment, mental and emotional distress and discomfort, all to Plaintiff's damage in
16 the amount according to proof at trial.

17 62. Defendant committed the acts described in the complaint oppressively,
18 fraudulently, and maliciously, entitling Plaintiff to an award of punitive damages against
19 Defendant.

20 **SEVENTH CAUSE OF ACTION**
21 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND/OR RETALIATION**
22 **Gov. Code § 12940(k)**
(Against All Defendants)

23 63. Plaintiff incorporates by reference all other paragraphs of this Complaint as
24 if they were re-alleged and set forth herein.

25 64. Plaintiff was an employee of Defendant and/or had another qualifying
26 relationship authorizing this cause of action. Plaintiff was subject to harassment,
27 discrimination, and/or retaliation as alleged herein in the course of employment.

28 65. Defendant failed to take all reasonable steps to prevent the harassment,

1 discrimination, and/or retaliation. Plaintiff was harmed and suffered legal damages and
2 Defendant's failure to take all reasonable steps to prevent the harassment,
3 discrimination, and/or retaliation was a substantial factor in causing Plaintiff's harm.

4
5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200**
7 **(Against All Defendants)**

8 66. Plaintiff incorporates by reference all other paragraphs of this Complaint as
9 if they were re-alleged and set forth herein.

10 67. Defendant's violations of the Labor Code and other laws and regulations as
11 alleged by this Complaint, and other wrongful, tortious and illegal acts and omissions, all
12 constitute unfair business practices in violation of the Unfair Competition Law, Business
13 and Professions Code § 17200 et seq.

14 68. As a result of Defendant's unfair business practices, Defendant has reaped
15 unfair benefits and illegal profits at the expense of Plaintiff and members of the public.
16 Defendant's utilization of such unfair business practices constitutes unfair competition
17 and provides an unfair advantage over Defendant's competition. Defendant should be
18 made to disgorge the ill-gotten gains and restore such monies to Plaintiff.

19 69. Defendant's unfair business practices entitles Plaintiff to seek preliminary
20 and permanent injunctive relief, including but not limited to orders that Defendant account
21 for, disgorge and restore to Plaintiff any compensation unlawfully withheld from Plaintiff,
22 and for which Defendant was unjustly enriched.

23 **NINTH CAUSE OF ACTION**
24 **VIOLATION OF AGE DISCRIMINATION IN EMPLOYMENT ACT ("ADEA") –**
25 **DISPARATE TREATMENT**
26 **(Against all Defendants)**

27 70. Plaintiff incorporates by reference all other paragraphs of this Complaint as
28 if they were re-alleged and set forth herein.

71. Defendant discharged Plaintiff from employment in September 2022.
Plaintiff was 40 years of age or older at the time she was discharged.

72. Defendant discharged Plaintiff because of her age, that is, Defendant would

1 not have discharged Plaintiff but for her age.

2 73. Defendant's discharge of Plaintiff was a substantial factor in causing
3 Plaintiff harm, including the harm suffered by Plaintiff by the discharge, among other
4 damages. Defendant's conduct was willful and Plaintiff is entitled to recover double the
5 amount of backpay awarded.

6
7 **TENTH CAUSE OF ACTION**
8 **CIVIL PENALTIES – PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
9 **(Against All Defendants)**

10 74. Plaintiff incorporates by reference all other paragraphs of this Complaint as
11 if they were re-alleged and set forth herein.

12 75. Plaintiff complied with all procedural requirements of Labor Code § 2699.3
13 before filing this cause of action. The LWDA did not respond to her notice of the alleged
14 violations within the statutory timeframe and Plaintiff has therefore exhausted
15 administrative remedies.

16 76. Plaintiff is an aggrieved employee. She was employed by Defendants and
17 the violations alleged herein and in the notice of alleged violations were committed
18 against her. Plaintiff brings this cause of action on behalf of herself and all other
19 aggrieved current and former employees of Defendant and seeks civil penalties for each
20 and every violation alleged herein. At the time of each violation, Defendants employed
21 one or more employees.

22 77. As a result of the aforesaid wrongful and illegal conduct of the Defendants,
23 and each of them, Plaintiff is entitled to civil penalties in an amount to be determined at
24 trial, costs, and attorney's fees against Defendants.

25 **ELEVENTH CAUSE OF ACTION**
26 **BREACH OF CONTRACT**
27 **(Against All Defendants)**

28 78. Plaintiff incorporates by reference all other paragraphs of this Complaint as
if they were re-alleged and set forth herein.

79. Plaintiff was employed by Defendant and compensated under the Sales
Representative Commission Agreement attached hereto as Exhibit 1. During her final

1 years of employment, Plaintiff was compensated at a commission rate of 0.52%. As of
2 the date of separation, Plaintiff had booked orders totaling \$20,962,661 and, on
3 information and belief, a portion of which had been shipped and paid for before her
4 termination.

5 80. Plaintiff did all, or substantially all, of the significant things that the contract
6 required her to do, and has satisfied all requirements under her contract, and is owed
7 approximately \$109,006 in commission wages. Defendant has failed to pay the wages
8 and, at the time of her separation from employment, failed to provide her with the
9 opportunity to make an election between receiving 50% of the booked orders or the full
10 amount of commissions owed within 120-days.

11 81. Defendant's conduct as alleged herein is a breach of the parties' contract,
12 and has caused Plaintiff to suffer harm in the amount of \$109,000. Plaintiff is entitled to
13 recovery of such amounts, plus interest, liquidated damages, and all other amounts as
14 authorize by law.

15 **ELEVENTH CAUSE OF ACTION**
16 **VIOLATION OF FLSA - OVERTIME**
17 **(Against All Defendants)**

18 82. Plaintiff incorporates by reference all other paragraphs of this Complaint as
19 if they were re-alleged and set forth herein.

20 83. Section 207(a) of the United States Code (FLSA) requires an employer to pay an
21 employee one and one-half times his/her regular rate of pay if he/she works a workweek in
22 excess of forty hours. Commission wages, incentive wages and non-discretionary bonuses are
23 part of an employees' regular rate of pay.

24 84. At all relevant times herein, Plaintiff was not exempt from FLSA overtime laws.
25 From March 2020, through September 2022, Plaintiff regularly and customarily worked in excess
26 of 40 hours in a week, resulting in substantial overtime hours.

27 85. Defendant failed to pay overtime wages to Plaintiff and its failure was knowing and
28 willful. As a direct result of Defendant's violations' Plaintiff suffered substantial losses related to
the use and enjoyment of compensation due and owing to her.

86. All available remedies for Defendant's violations are sought for the violations,

1 including but not limited to, any and all wages, liquidated damages' penalties' monies, interest'
2 attorney's fees and costs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 5 1. For compensatory damages in an amount to be proven at trial;
6 2. General and special damages, in an amount to be proven at trial;
7 3. For temporary, preliminary, and permanent injunction;
8 4. Attorney's fees and costs of suit;
9 5. For punitive and exemplary damages;
10 6. For all penalties authorized under the law;
11 7. For all liquidated damages as provided by law;
12 8. Pre-judgment interest on any damages or other amounts deemed payable;
13 9. Other or further relief as the Court deems just and proper.

14 Dated: August 27, 2024

HAULK & HERRERA, LLP

15 
16 By: _____

17 Matthew A. Haulk, Esq.
18 Jose M. Herrera, Esq.
19 Attorneys for Plaintiff
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EXHIBIT 1



SKECHERS

SALES REPRESENTATIVE COMMISSION AGREEMENT

This Commission Agreement is made and entered into this **1st** day of **January, 2013**, by and between SKECHERS U.S.A., Inc. (hereafter "SKECHERS") and **Therese Murphy - Emp# 2524** (hereafter the "Sales Representative").

The Sales Representative wishes to be or is employed by SKECHERS in a position that primarily involves sales of products to SKECHERS customers. SKECHERS wishes to employ the Sales Representative in a sales position, subject to the terms and conditions of this Agreement; and

The parties desire to set forth the terms of the Sales Representative's compensation and commission plan in this Agreement.

In consideration of the mutual promises set forth below, SKECHERS and the Sales Representative agree as follows:

128. **EARNING OF COMMISSIONS.** The Sales Representative will be eligible to earn commissions on products he/she sells provided SKECHERS determines, in its sole and absolute discretion, that all the following conditions precedent are fully satisfied: (a) Employee is primarily responsible for soliciting and/or generating the sale; (b) the sale is approved by SKECHERS; (c) the merchandise ships; (d) an invoice is issued upon shipment; (e) the customer accepts the merchandise and pays SKECHERS the entire amount of the invoice on the sale; (f) the Sales Representative works exclusively for SKECHERS as a sales representative; and (g) the sale is final, with no returns, chargebacks, or credits. Although SKECHERS may advance commissions in the form of a draw to the Sales Representative, no commission is earned for any sale(s) unless and until the Sales Representative satisfies all of the conditions precedent necessary to earn a commission, as determined by SKECHERS in its discretion. If the Sales Representative is advanced commissions that are not later earned, the Sales Representative will have been overpaid. SKECHERS will reconcile the overpayment and recoup the advance from the Sales Representative's subsequently earned commissions.

129. **COMMISSION RATES.** SKECHERS typically announces its revised commission rates at the end of each calendar year. These rates normally became effective on January 1 of each year. Revised rates will be provided to the Sales Representatives in writing.

130. **DRAWS (ADVANCES) AGAINST COMMISSIONS.** In an effort to assist the Sales Representative, SKECHERS shall provide the Sales Representative with a draw (advance) against commissions earned in the future in the amount of **\$ 6153.86** per month. If a sale upon which the Sales Representative was paid commissions in advance is not earned as set forth above in Section 1, the Sales Representative will have been overpaid commission on said

sale, and any such unearned commission may, at SKECHERS sole and absolute discretion, be deducted from Employee's future compensation, including Employee's final paycheck. Employee expressly authorizes SKECHERS to deduct any such unearned commissions. Draws will be paid out on the second pay period of each month.

131. **SETTLEMENT PERIOD.** SKECHERS shall calculate commissions due to the Sales Representative by the end of the second pay period of each month following the month in which the commissions were earned. All draws/advances paid shall be credited toward the commissions earned for purposes of settling out the amounts due to the Sales Representative.

132. **COMMISSIONS UPON SEPARATION OF EMPLOYMENT.** Upon the Sales Representative's separation of employment from SKECHERS for any reason, the Sales Representative will have the choice of two commission pay-out options:

(a) **Option 1: Commissions Upon Separation.** Under Option 1, the Sales Representative can voluntarily elect to be paid out fifty (50) percent of all pending orders submitted by the Sales Representative prior to separation, whether they have shipped or not and regardless of whether the other conditions precedent identified in Section 1 to earn a commission above are satisfied. If a Sales Representative chooses this option, he/she will have been paid all commissions due in full at the time of separation and will not earn or be paid any additional commissions over time. The Sales Representative will be required to sign a separate agreement if this option is elected.

(b) **Option 2: Commissions Over Time.** Under this option, the Sales Representative must satisfy all of the conditions precedent set forth in Paragraph 1 above in order to earn commissions. The commissions on the final shipment attributed to the Sales Representative will be paid 120 days after the final shipment to ensure that the sale is final with no returns, chargebacks or credits. Any such commissions will be sent by mail to the Sales Representative's last known address, unless the Sales Representative makes other arrangements with SKECHERS in writing.

133. **PRICING.** SKECHERS, in its sole and absolute discretion, may (a) establish and change the prices it charges its customers, (b) make adjustments or discounts to its prices, as it finds appropriate in the interest of customer relations, promotion and/or other considerations, and (c) determine the proper credit for any sale in the event of a dispute as to the credit of a sale of a particular item or items.

134. **OTHER INCENTIVES.** The Sales Representative may also be eligible to earn other incentives from time to time. Details of any additional incentive program will be provided to the Sales Representative. SKECHERS reserves the right to discontinue or revise any incentive program at any time in its sole discretion.

135. **EMPLOYMENT AT WILL.** Notwithstanding anything in this Agreement seemingly to the contrary, the employment relationship between the Sales Representative and SKECHERS shall be for an unspecified duration. Either the Sales Representative or SKECHERS may terminate the employment relationship at any time, either

with or without cause or advance notice. This represents an integrated agreement with respect to the at-will nature of the employment relationship.

136. **RIGHT TO REVISE.** SKECHERS reserves the right to amend any provision of the Sales Representative Commission Agreement, other than its employment-at-will provisions, at any time, based on the needs of the company, as determined in the sole discretion of SKECHERS.

137. **ENTIRE AGREEMENT.** This Agreement supersedes all prior discussions and agreements between SKECHERS and the Sales Representative with respect to the subject matter hereof. This Agreement will remain in effect unless and until it is terminated or amended based on the provisions contained herein.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read this Agreement, understand it, and have freely and voluntarily entered into it.

"SALES REPRESENTATIVE"

DATED:

3/11/13

Theresa Murphy

"SKECHERS"

DATED:

4/1/13

Maureen Mackay
For SKECHERS