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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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Attorneys for Plaintiff
Skechers U.S.A., Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV09-04308 AHM VBKx

SKECHERS U.S.A., INC., a Delaware
corporation,

Plaintiff,

v.

SHAPE UP SHOES, LLC, a Georgia
limited liability company,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY
JUDGMENT

Plaintiff SKECHERS U.S.A., INC. ("Plaintiff" or "Skechers"), by its
attorneys, as and for its Complaint against Defendant Shape Up Shoes, LLC
("Defendant" or "Shape Up Shoes") alleges as follows:

1. Skechers brings this action in response to Defendant's attempt to
preclude it from using the terms "Shape -Ups," "Shape-Ups by Skechers," and
"Shape Up While You Walk," for shoes with a fitness technology to help the wearer
to shape up (i.e., get into better physical "shape"). Skechers is a well known
footwear designer, wholesaler and retailer selling at any given time over 2,500 styles
of shoes throughout the world. Skechers is one of the most prominent shoe brands
in the world.

1 **FACTS COMMON TO BOTH COUNTS**

2 8. Skechers is an award-winning global leader in the footwear industry,
3 headquartered in Manhattan Beach, California. Skechers designs, develops and
4 markets lifestyle footwear that appeals to men, women and children. Currently
5 Skechers has over 2,500 different styles and sells tens of millions of pairs of its
6 shoes each year.

7 9. Skechers has achieved tremendous recognition and success. Its
8 products are sold through third party department and specialty stores across the
9 country, as well as through Skechers' own network of company-owned and
10 -operated retail stores and e-commerce website www.skechers.com. Skechers also
11 sells its products outside of the United States in over 100 countries and territories.

12 10. As part of its business, Skechers has developed a family of trademarks
13 and logos and sub-brands to both identify it as the source of its products and to
14 describe its products. The family of trademarks and subcategories of brands
15 include, among others, SKECHERS, SKECHERS SPORT, SKECHERS WORK,
16 SKECHERS CALI, SKECHERS CALI GEAR, SKECHERS RELAXED FIT,
17 SKECHERS ACTIVE, SKECHERS D'LITES, SKECHERS COMFORT
18 WALKERS, SKECHERS OUTDOOR, SKECHERS KIDS, SKECHERS BEACH,
19 SKECHERS SERIOUSLY LIGHTWEIGHT, SKECHERS STATUS SERIES,
20 SKECHERS PERFORMANCE, SKECHERS SPORT FUSION, SKECHERS
21 TOTALLY ACTIVE, SKECHERS SLIP-RESISTANT, SKECHERS CLASSIC,
22 SKECHERS FASHION ATHLETIC, SKECHERS COURT, SKECHERS
23 ADVENTURERS, SKECHERS POLISHABLES, SKECHERS AUSTRALIA,
24 SKECHERS COLLECTION, SKECHERS TONE-UPS and SKECHERS SHAPE-
25 UPS. In addition, Skechers has registered a variety of logos incorporating an "S"
26 symbol. In each case, the Skechers product, packaging and advertising enumerated
27 above designates Skechers as the source of the footwear and describes the product's
28 features, objectives, use or purpose.

1 11. At times relevant hereto, Skechers commenced sales of a line of shoes
2 with a fitness technology such that, by simulating walking barefoot on a yielding
3 surface (such as sand), the shoes provide an exercising benefit to the wearer, helping
4 the wearer to shape up. Skechers calls the line "Shape-Ups." Skechers has a patent
5 pending on its proprietary walking fitness technology.

6 12. The world famous SKECHERS brand name and, often, the Skechers'
7 "S" brand logo symbol appear clearly and permanently on multiple surfaces on each
8 actual shoe in Plaintiff's line of Shape-Ups shoes. These "on-shoe" markings with
9 the SKECHERS name are in addition to Plaintiff's use of its SKECHERS brand in
10 every other way that one might encounter Plaintiff's line of shoes for shaping up,
11 namely, on the shoe boxes holding the shoes, in each advertisement Plaintiff places
12 on line or in magazines, in instructional videos, and on stand-alone point of sales
13 stands and otherwise within its SKECHERS stores and other retail venues. Indeed,
14 many of Plaintiff's shoes, including those offered under its sub-brands, are sold in
15 this SKECHERS branded context.

16 13. Defendant sells shoes that it claims in its advertising increase leg
17 strength, lengthen muscles, help prevent injury, ease pain from plantar fasciitis
18 naturally, greatly improve circulation in the legs and feet, reduce swelling, improve
19 posture and lessen low back pain naturally, greatly improve balance and inner core
20 strength, improve back health, and create healthy looking lower extremities. In
21 other words, Defendant's shoes are designed to help the wearer shape up (get into
22 better physical "shape"). Defendant's web site, at <http://www.shapeupshoes.com>
23 touts the ability of these shoes to help the wearer shape up with the slogan "The
24 Most Convenient Way to SHAPE UP!" A screen shot showing Defendant's
25 "SHAPE UP!" claim is attached hereto as Exhibit 1. Exhibit 1 further describes the
26 function of Defendant's shoes as follows: "Too busy for the gym? Wear your
27 SHAPE UP Shoes just 30 minutes a day for... lifted buns toned legs and a stronger
28 core."

1 14. By its letter from its counsel to Skechers dated June 9, 2009,
2 Defendant, claimed, *inter alia*, that that Shape Up Shoes' use of the alleged mark
3 SHAPE UP SHOES has been made "continuously since at least as early as March,
4 2006 on and in connection with footwear," further alleging that as a result "the
5 public and trade have come to recognize footwear and other wearing apparel
6 promoted under this mark or a confusingly similar mark as being provided or
7 sponsored by our client." It further alleges that Skechers' "use of the very similar
8 SHAPE-UPS and SHAPE UP marks in connection with footwear and other wearing
9 apparel clearly will cause confusion, deception and mistake in the trade and among
10 established customers of our client. In view of this infringement and unfair
11 competition, we demand that you immediately cease and desist in your use of the
12 marks SHAPE-UPS or SHAPE UP alone or in combination with other words in
13 connection with footwear or any other types of wearing apparel." A copy of this
14 cease and desist letter is attached hereto as Exhibit 2.

15 15. On information and belief Defendant's use of the highly descriptive
16 term Shape Up Shoes for its shape up shoes has not caused the public and trade to
17 recognize footwear or other wearing apparel promoted under the term Shape Up
18 Shoes to emanate from the Defendant; the mark has not acquired distinctiveness,
19 and had not acquired distinctiveness ("secondary meaning") at any time relevant
20 prior to Plaintiff's use of its accused terms for its own SKECHERS line of shape up
21 shoes.

22 16. The term in which Defendant claims a trademark has been employed
23 frequently for many years by numerous persons and entities to denote shaping up.
24 There are at least 50 live registrations and applications on the records of the U.S.
25 Patent and Trademark Office that include the word "shape" in International Class 25
26 (apparel and shoes).

27 17. The term Shape Up Shoes lacks inherent distinctiveness and has not
28 acquired secondary meaning, and as a result, Defendant does not and indeed cannot

1 own any enforceable trademark rights in this term for shoes that Defendant itself
2 promotes as "The Most Convenient Way to SHAPE UP!"

3 18. Even if Defendant's mark were valid and enforceable, which it is not,
4 there could be no likelihood of confusion – the crux of any infringement or unfair
5 competition claim – because the SKECHERS famous brand name and often its "S"
6 trademark logo appear on each shoe, shoebox, the full range and medium of
7 advertisements, and in the retail environment as aforesaid, signaling Skechers as the
8 source of its own Shape-Ups line of shoes for helping the wearer to shape up.

9 **COUNT I**

10 **DECLARATION OF INVALIDITY AND NON-INFRINGEMENT OF**
11 **CLAIMED**
12 **SHAPE UP SHOES TRADEMARK**

13 19. Skechers incorporates herein by reference each and every allegation
14 contained in paragraphs 1 through 18 above, as though set forth in full herein.

15 20. By virtue of Defendant's cease and desist letter to Skechers dated
16 June 9, 2009, an actual controversy has arisen and exists between Skechers and
17 Defendant within the power of this Court to determine pursuant to the Declaratory
18 Judgment Act, 28 U.S.C. §§ 2201-2202.

19 21. Defendant has claimed that it has protectible trademark rights in the
20 term Shape Up Shoes. Defendant has claimed that Skechers' use of "Shape-Ups" and
21 "Shape-Ups by Skechers" and "Shape Up While You Walk" creates a likelihood of
22 confusion between the goods of the parties, and that Plaintiff's use is "infringement
23 and unfair competition." Defendant has directly accused Skechers of trademark
24 infringement and unfair competition and has created a reasonable apprehension on
25 the part of Skechers that Defendant will bring an action against Skechers for
26 trademark infringement and unfair competition under, *inter alia*, the Lanham Act.

27 22. Skechers has not infringed and is not infringing in any way Defendant's
28 claimed trademark rights to Shape Up Shoes. Defendant's use of the term is not

1 source-identifying, but rather is descriptive in nature. Defendant also lacks rights to
2 the claimed trademark because it lacks inherent distinctiveness and has not acquired
3 secondary meaning as a source-identifier of Defendant's products.

4 23. Even if Defendant has a valid trademark right to the term, which it does
5 not, there is no likelihood of confusion between any of Skechers' uses of the accused
6 "Shape-Ups," "Shape-Ups by Skechers" and "Shape Up While You Walk" terms
7 and Defendant's claimed trademark in its shape up shoe.

8 24. By reason of the existence of an actual and justiciable controversy,
9 Skechers is entitled to a declaratory judgment that the Defendant lacks trademark
10 rights in the term "Shape Up Shoes" for its shape up shoes, and that Plaintiff's shoes
11 bearing the terms "Shape-Ups," "Shape-Ups by Skechers", "Shape Up While You
12 Walk" and/or any other, similar use, e.g. "Skechers Shape-Ups," do not: (i) infringe
13 any of Defendant's common law trademark rights it might have accrued through its
14 use of the term; (ii) violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
15 or (iii) violate any other trademark or unfair competition laws.

16 25. Skechers is further entitled to attorneys' fees under 15 U.S.C
17 §§ 1117(a).

18 26. This Court's determination of the issues presented by the actual
19 controversy between Skechers and Defendant will afford relief from the uncertainty,
20 insecurity and controversy with respect to the rights, status and legal relations
21 between the parties. A declaration of the parties' respective rights will settle the
22 conflicting and disputed claims of the parties, will afford them the security of
23 knowing precisely what their respective rights are, and will prevent a multiplicity of
24 actions that will arise if the parties continue on their present course of action without
25 a judgment from this Court. Declaratory relief is equitable, necessary and proper
26 under the circumstances presented by this case.

COUNT II

DECLARATION THAT PLAINTIFF HAS NOT ENGAGED IN UNFAIR

COMPETITION REGARDING DEFENDANT'S CLAIMED

SHAPE UP SHOES TRADEMARK

27. Skechers incorporates herein by reference each and every allegation contained in paragraphs 1 through 26 above, as though set forth in full herein.

28. Insofar as Defendants' cease and desist letter being Exhibit 2 hereto further alleges "unfair competition," the foregoing Complaint allegations herein incorporated by reference also provide a basis for Declaratory Judgment pertaining to Defendant's "unfair competition" claim because the acts Defendant alleges as "unfair competition" are the same as those giving rise to its allegation of Plaintiff's "infringement" of Defendant's putative trademark.

WHEREFORE, Skechers respectfully requests that the Court enter judgment in its favor as follows:

(a) For a declaration of invalidity of Defendant's so-called trademark Shape Up Shoes for shoes for the purpose of helping the wearer to shape up and that Defendant claims or has claimed are "The Most Convenient Way to SHAPE UP!"

(b) For a declaration that Skecher's use of "Shape-Ups," "Shape-Ups by Skechers" and "Shape Up While You Walk" or any other similar use, e.g. "Skechers Shape-Ups," as sub-brands for Skechers' line of shape up shoes prominently branded as SKECHERS does not:

(i) infringe any common law trademark rights Defendant might have accrued;

(ii) violate any other federal or state laws, including unfair competition laws;

(c) For an award of costs, disbursements and reasonable attorneys' fees to Skechers assessed against Defendant; and

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(d) For an award of such other and further relief as the Court may deem just and proper.

Dated: June 16, 2009

IRELL & MANELLA LLP
Morgan Chu
Jane Shay Wald
Jonathan H. Steinberg

By: Jane Shay Wald
Jane Shay Wald
Attorneys for Plaintiff
Skechers U.S.A., Inc.

EXHIBIT 1

SHAPEUP Shoes

Buy Now! | News | How to Use | Customers Say... | The Shape Up Shop | FAQs



Too busy
for the gym?

Wear your
SHAPE UP Shoes
just 30 minutes
a day for...
lifted bums
toned legs and
a stronger core



The Most Convenient Way to SHAPE UP!

Find a Store | Wholesale | About Us | Policies | Contact Us | HOME
All content copyright 2009 Shape Up Shoes. All right reserved.

Sign up for more
SHAPE UP

GO

EXHIBIT 2

Nixon & Vanderhye PC

ATTORNEYS AT LAW

11TH FLOOR
901 NORTH GLEBE ROAD
ARLINGTON, VIRGINIA 22203-1808
UNITED STATES OF AMERICA

TELEPHONE: (703) 816-4000
FACSIMILE: (703) 816-4100
WRITER'S DIRECT DIAL NUMBER:
(703) 816-4041
E-MAIL: fpp@NIXONVAN.COM

June 9, 2009

UPS COURIER

President
Skechers U.S.A., Inc.
228 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

*Subject: **SHAPE UP SHOES, LLC**
SHAPE UP SHOES
Our Reference: 5384-2*

Dear Sir/Madam:

As attorneys for Shape Up Shoes, LLC of Atlanta, Georgia, our attention has been directed to your use of the mark SHAPE-UPS and variations of this mark on and in connection with footwear and other wearing apparel.

Our client, Shape Up Shoes, LLC, is the owner of the mark SHAPE UP SHOES and has been using this mark continuously since at least as early as March, 2006 on and in connection with footwear. Our client has filed Application Serial No. 77/663206 in the Patent & Trademark Office to register its mark SHAPE UP SHOES for footwear and your pending applications for the marks SHAPE-UPS, SHAPE-UPS BY SKECHERS and SHAPE UP WHILE YOU WALK have been cited against our client's application. We note that all of the cited applications are based on intent-to-use and have filing dates of August 15 or December 16, 2008.

As a result of the continuous and substantial use of the mark SHAPE UP SHOES by our client since at least as early as March, 2006, the public and trade have come to recognize footwear and other wearing apparel promoted under this mark or a confusingly similar mark as being provided or sponsored by our client. Accordingly, your use of the very similar SHAPE-UPS and SHAPE UP marks in connection with footwear and other wearing apparel clearly will cause confusion, deception and mistake in the trade and among established customers of our client.

EXHIBIT 2

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1489414
Skechers EX1064
Skechers v. FAST IP
IPR2026-00373

Skechers U.S.A., Inc.

June 9, 2009

Page 2

In view of this infringement and unfair competition, we demand that you immediately cease and desist in your use of the marks SHAPE-UPS or SHAPE UP alone or in combination with other words in connection with footwear or any other types of wearing apparel. Based on its significantly earlier date of first use, it is our client's intention to file petitions to cancel any registrations that may issue on your pending applications to register the SHAPE-UPS or SHAPE UP marks that have been cited against our client's application.

Please give this matter your immediate attention. If we do not receive a satisfactory response from you within fifteen days of the date of this letter, we will be forced to initiate appropriate action to protect our client's valuable rights in its mark SHAPE UP SHOES.

Very truly yours,

NIXON & VANDERHYE P.C.

By:



Frank P. Presta

FPP:cgp

cc: Ryan Bright

EXHIBIT 2

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

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge A. Howard Matz and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV09- 4308 AHM (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SKECHERS U.S.A., INC.,
a Delaware corporation,

PLAINTIFF(S)

v.

SHAPE UP SHOES, LLC,
a Georgia limited liability company,

DEFENDANT(S).

CASE NUMBER

CV 09-04308

AHM

VBK

SUMMONS

TO: DEFENDANT(S): SHAPE UP SHOES, LLC

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jane Shay Wald, Irell & Manella LLP, whose address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: June 16, 2009

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

SKECHERS U.S.A., INC., a Delaware corporation,

DEFENDANTS

SHAPE UP SHOES, LLC, a Georgia limited liability company,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Irell & Manella LLP, 1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010

Attorneys (If Known)

Nixon & Vanderhye P.C.
901 North Glebe Rd., 11th Floor
Arlington, Virginia 22203-1808

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in this State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT: \$** Declaratory Relief

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

5 U.S.C. § 1051 et seq. and 28 U.S.C. § 2201 et seq.; Declaratory relief re Trademark

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Act ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Info. Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutional of State Statutes	CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	TORTS PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Fed. Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury-Med Malpractice ☐ 365 Personal Injury-Product Liability ☐ 368 Asbestos Personal Injury Product Liability IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus-Alien Detainee ☐ 465 Other Immigration Actions	TORTS PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability BANKRUPTCY ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 American with Disabilities - Employment ☐ 446 American with Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 530 Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus/Other ☐ 550 Civil Rights ☐ 555 Prison Condition FORFEITURE/PENALTY ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety /Health ☐ 690 Other	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☒ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV 09-04308

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Georgia

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): James May Wald Date June 16, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))