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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

16 THE PEOPLE OF THE STATE OF CALIFORNIA,  
17 Plaintiff,  
18 v.  
19 PRATIBHA SYNTEX LTD., and DOES 1  
20 through 10,  
21 Defendants.

Case No. **BC499751**

COMPLAINT FOR INJUNCTION AND  
CIVIL PENALTIES BASED ON:  
(1) VIOLATIONS OF THE UNFAIR  
COMPETITION LAW (Bus. & Prof. Code  
§§ 17200, *et seq.*)

EXEMPT FROM FILING FEES  
PURSUANT TO CALIFORNIA  
GOVERNMENT CODE § 6103

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 24 2013

John A. Clarke, Executive Officer/Clerk  
BY *Cristina Grijalva* Deputy  
Cristina Grijalva

1 COMES NOW, the People of the State of California, by and through Kamala D. Harris,  
2 Attorney General of the State of California, allege on information and belief:

3 **INTRODUCTION**

4 1. California is home to numerous artists, creators, inventors, authors, software  
5 designers, engineers, researchers, and other innovators. These pioneers invest billions of dollars  
6 every year to create the electronic devices, software, information technology, films, recordings,  
7 pharmaceuticals, and fashion that people across California, the United States, and the world use  
8 every day. In California, intellectual property industries employ 7.4 million people and produce  
9 \$923 billion of economic output.

10 2. California's economy thrives on the intellectual property of the artists, creators,  
11 inventors, authors, software designers, engineers, researchers, and other innovators who live and  
12 work in the state. Beyond the companies that create the intellectual property, piracy affects  
13 numerous other industries that use this intellectual property such as the apparel industry.

14 3. California's economy loses \$34 billion annually as a result of counterfeiting and  
15 piracy. The theft of intellectual property created by Californians, including the downstream, anti-  
16 competitive effects on California companies who comply with the law by paying license fees,  
17 cannot be remedied simply by filing lawsuits in those foreign countries where the piracy or  
18 counterfeiting occurs.

19 4. The American apparel manufacturing industry, centered in Los Angeles, has become  
20 increasingly reliant upon software in the manufacturing and on-time inventory and shipping of  
21 apparel such as clothes and other items. These law-abiding companies spend substantial capital  
22 to license the software that enables them to run their businesses in the 21st Century.

23 5. When overseas companies pirate software used in apparel design, such as Adobe  
24 Photoshop or other back-office software, such as Microsoft Office, they obtain a critical short-  
25 term advantage over their American competitors by not paying licensing fees to software  
26 developers. That is, by not paying for software while their license fee-paying competitors do,  
27 overseas apparel companies thereby gain a substantial and unfair cost advantage in an industry  
28 characterized by very thin margins.

1           6.     Moreover, they also obtain a long-term advantage: American companies that are  
2 developing the software of tomorrow that will streamline apparel design, manufacturing, and  
3 delivery are disincentivized from investing in developing such software if they know that  
4 overseas apparel companies will simply pirate that software, refusing to pay licensing fees and  
5 thus undermining the return on investment in development of such software. And, insofar as  
6 American apparel companies themselves attempt to develop that software, they will suffer from a  
7 competitive disadvantage vis-à-vis their overseas counterparts who can take the money saved  
8 from paying licensing fees to gain an edge in financing research and development of such  
9 software. Thus, by using software without paying for it now, overseas apparel companies can  
10 stunt the development of such software by and for American apparel companies while investing  
11 in the development of such software for themselves and thereby gain an even further advantage  
12 over American apparel companies.

13           7.     In fact, over time, apparel companies who are deprived of the competitive advantages  
14 of software may simply choose to downsize in the United States and relocate overseas, resulting  
15 in the permanent loss of jobs and manufacturing in California and elsewhere. The loss of a  
16 competitive advantage, resulting in downsizing and overseas relocation, is most often not  
17 reversed as witnessed by such industries as the television industry where televisions are no longer  
18 manufactured in the United States.

19           8.     Generally, state laws, federal laws, and international treaties do not address the  
20 pernicious downstream effects of such piracy in the California apparel industry. The Defendants'  
21 use of pirated software to gain a competitive short-term and long-term advantage over domestic  
22 apparel companies in California can, however, be remedied by proscribing such tactics as an  
23 unfair method of competition under California law.

24           9.     Consequently, Kamala D. Harris, Attorney General, State of California, brings this  
25 civil unfair competition action in her official capacity on behalf the People of the State of  
26 California against Defendant PRATIBHA SYNTEX LIMITED ("Pratibha") under section 17200  
27 *et seq.* of the California Business & Professions Code for engaging in unfair competition via the  
28 illegal use of copyrighted software programs.

1           10. Defendant Pratibha is an apparel manufacturing company located in India and makes  
2 substantial sales of its apparel products into California. For example, since 2010, Defendant  
3 Pratibha has shipped over 19,000 pounds of its apparel products into California. In  
4 manufacturing these apparel products, Defendant Pratibha uses and does not pay for computer  
5 software programs, including those owned by Adobe Systems, Inc. (“Adobe”) and/or Microsoft,  
6 Inc. (“Microsoft”) and/or others.

7           11. Software and information technology are critical to the apparel manufacturing and  
8 shipping business, having applications in everything from initial design to programming  
9 machines to cut and assemble fabrics and to quality control. Further, profit margins in the apparel  
10 manufacturing industry are very thin. Thus, Defendant Pratibha’s piracy of software enables it to  
11 save costs for a critical input in the apparel manufacturing industry and thereby gain a substantial  
12 and unfair competitive advantage over its competitors in California who pay licensing fees for the  
13 software and information technology they use in their businesses.

14           12. Apparel manufacturers are a significant business presence in California, employing  
15 about 58,000 Californians in 2011 and producing over \$5 billion a year in revenue every year  
16 since 1990. California apparel manufacturers invest heavily in the software and information  
17 technology that is essential to their business. In light of the very thin margins in this industry,  
18 avoidance of the cost of such software and information technology through piracy by overseas  
19 apparel companies imposes a significant disadvantage and competitive injury on California  
20 apparel companies.

21           13. In addition, by not paying for software, Defendant Pratibha enjoys the advantage of  
22 being able to use those savings to hire more workers or invest in research to innovate and thereby  
23 gain further advantages over its license fee-paying competitors.

24           14. In fact, software produced for the apparel industry helps create efficiencies for  
25 manufacturers in the industry through the application of such software. These efficiencies can  
26 help keep California apparel manufacturers in California despite cost pressures and other trends  
27 that have caused such businesses to move overseas. Theft of software and information  
28 technology by apparel manufacturers, however, reduces the incentives for software companies to

1 innovate and create software for the apparel industry. Software firms, including firms in  
2 California, will have little incentive to invest in the research and development to innovate  
3 software for apparel manufacturers if they are not remunerated and the fruits of such investments  
4 are stolen. As a result, fewer and fewer firms and resources will be devoted to creating the  
5 efficiency-enhancing software that helps keep apparel manufacturers in California viable.

#### 6 **JURISDICTION AND VENUE**

7 15. This Court has jurisdiction to hear the claims alleged in this Complaint and is a Court  
8 of competent jurisdiction to grant the relief requested.

9 16. This Court has jurisdiction over Defendant Pratibha because Defendant Pratibha has,  
10 at all relevant times, produced or manufactured goods sold or transported in or delivered to the  
11 State of California.

12 17. Venue is proper in this Court because Defendant Pratibha's violations of Business  
13 and Professions Code Section 17200 harmed competition in the County of Los Angeles. Apparel  
14 manufacturers are a substantial business presence in the state, employing over 580,000 people last  
15 year and generating over \$5 billion in revenue each year since 1990. This industry is, in fact,  
16 largely based in Los Angeles County. In 2010, apparel manufacturers in Los Angeles County  
17 employed 40,872 workers, 69.5% of the state's total employees in the apparel industry, and 10.9%  
18 of the county's manufacturing work force. Defendant Pratibha's conduct subjects these  
19 California apparel manufacturers to unfair competition in that they have to bear the cost of paying  
20 for a key input, licenses for software and information technology, while Defendant Pratibha  
21 avoids such costs by illegally pirating this intellectual property.

#### 22 **PLAINTIFF**

23 18. Plaintiff, the People of the State of California ("Plaintiff"), is represented by Kamala  
24 D. Harris, Attorney General, State of California. As the Attorney General for the State of  
25 California, Kamala D. Harris is the chief law officer for the State (Cal. Const. Art. 5, § 13) and is  
26 authorized to enforce the above-referenced statutes.

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**DEFENDANT**

19. Defendant Pratibha is a corporation organized under the laws of India with its principal place of business in India. It is a vertically integrated manufacturing company that produces yarns, fabrics, and garments. The yarns, fabrics, and/or garments are sold in, transported in, or delivered to California in competition with California-based apparel manufacturers.

20. During the relevant period set out below in this Complaint, by illegally using pirated software programs, Defendant Pratibha gained or attempted to gain an unfair competitive advantage over apparel industry competitors doing business in California who used properly licensed software programs.

21. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Each of said fictitiously named Defendants is responsible in some manner for the violations of law herein alleged. Plaintiff will amend this complaint to add the true names and capacities of the fictitiously named Defendants once they are discovered.

22. Whenever reference is made in this complaint to any act of Defendant Pratibha, such allegation shall mean that said Defendant Pratibha and its owners, officers, directors, agents, employees, or representatives did, authorized, directed, and/or ratified such acts while engaged in the management, direction, or control of the affairs of Defendant Pratibha while acting within the scope and course of their duties.

23. Whenever reference is made in this complaint to any act of Defendants Pratibha and Does, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants.

24. Whenever reference is made in this complaint to any act of any individual Defendant, such allegation shall be deemed to mean that said Defendant is and was acting (a) as a principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so alleged on behalf of every other Defendant herein.

1  
2 **FACTUAL ALLEGATIONS**

3 **A. Defendant Pratibha's Business and Impact in California**

4 25. Defendant Pratibha is a vertically integrated textile manufacturer that produces both  
5 raw materials and finished garments.

6 26. Defendant Pratibha's products are delivered to, transported in, and/or sold in  
7 California.

8 27. Since 2010, Defendant Pratibha has shipped over 19,000 pounds of goods into  
9 California.

10 28. Defendant Pratibha ships its products to purchasers and/or consignees in California  
11 such as Burleigh Point, located in Irvine, California, and Lululemon USA Inc. ("Lululemon"),  
12 located in Beverly Hills, California. For example, between February and May 2011, Defendant  
13 Pratibha shipped 2,742 pounds of its products to the Port of Los Angeles for Burleigh Point.  
14 Between January and June 2010, Defendant Pratibha shipped almost 9,300 pounds of its products  
15 to the Port of Los Angeles for Lululemon.

16 29. Defendant Pratibha's products compete with products that are manufactured and/or  
17 sold by California companies.

18 **B. Defendant Pratibha's Software Piracy**

19 30. Defendant Pratibha uses computer software programs in its normal business  
20 operations. The copyrights of some of these computer software programs are owned by  
21 companies in the United States.

22 31. Defendant Pratibha uses computer software programs that are owned by Microsoft, a  
23 company organized under the laws of the State of Washington.

24 32. On or about December 21, 2011, Microsoft filed a lawsuit in the High Court of Delhi  
25 at New Dehli, India on behalf of itself and its wholly-owned marketing subsidiary, Microsoft  
26 Corporation India Private Limited ("Microsoft India"), organized under the laws of India, against  
27 Defendant Pratibha and one of Defendant Pratibha's employees for violations of Indian copyright  
28 laws. ["MS v. Pratibha"].

1           33. Microsoft alleged that the copyrights of their software products under United States  
2 copyright laws were enforceable under the copyright laws of India through the Berne Convention,  
3 to which the United States and India are both signatories. Under the Berne Convention, the  
4 copyrights of Microsoft are protected under Indian copyright law as though its works were first  
5 published in India.

6           34. During the course of its lawsuit against Defendant Pratibha, Microsoft discovered  
7 through a court-ordered inspection of Defendant Pratibha's computer systems that Defendant  
8 Pratibha had installed pirated Microsoft software products on its computer systems.

9           35. Upon information and belief, Defendant Pratibha has not asserted any valid defenses  
10 as to its use of pirated Microsoft programs.

11           36. The pirated computer software programs are those for which Defendant Pratibha did  
12 not pay the required licensing fee to Microsoft for the use of those programs.

13           37. The pirated Microsoft software discovered on Defendant Pratibha's computers  
14 systems includes Windows OS, Windows Server Enterprise, SQL Server Enterprise Processor,  
15 Office Professional, Project Professional, Windows Server CAL, and Visual Studio Premium  
16 w/MSDN.

17           38. The estimated license value of the copied/pirated Microsoft software found on  
18 Defendant Pratibha's computer systems is \$389,098.00.

19           39. On information and belief, Defendant Pratibha is illegally using additional pirated  
20 software programs in the normal course of business, including Adobe's.

### 21                                   **EFFECT ON COMPETITION IN CALIFORNIA**

22           40. Information technology ("IT") costs such as the licensing fees of computer software  
23 programs impact the profit margins and overhead costs of competitors in the apparel industry.

24           41. Computer software is used in all facets of the apparel industry, including back-office  
25 support, product design, production, and production management.

26           42. Software piracy occurs when computer software is installed and used on a company's  
27 computer system without paying the appropriate licensing fees.

28           43. The apparel industry is a competitive industry that functions on thin margins.



1           44. The financial costs of maintaining software licenses impact the operational expenses  
2 and profit margins of California apparel firms who properly pay the licensing fees associated with  
3 the software programs used in their firms.

4           45. Given the thin margins associated with the apparel industry, the cost savings derived  
5 from using illegally pirated software creates an unfair competitive advantage that substantially  
6 harms competition in the California apparel industry.

7           46. The cost savings derived from the illegal use of pirated computer software lowers an  
8 apparel manufacturer's overhead costs which in turn allows it to charge lower prices for its goods.

9           47. A competitor who illegally uses pirated computer software can gain or attempt to gain  
10 an unfair competitive advantage over California competitors who use lawfully licensed software.

11           48. The unfair competitive advantage can be used to artificially lower prices for its goods  
12 or to invest in other areas such as hiring additional employees and purchasing machinery.

13           49. The illegal use of pirated software also discourages the production of new software  
14 and harms innovation in the development of software programs used in the apparel industry in the  
15 design and manufacturing of goods.

16           50. Although the manufacturing component in the apparel industry has increasingly  
17 moved to foreign countries, product design and manufacturing specialty software have created  
18 efficiencies that help California competitors remain in California.

19           51. Copyright holders of such specialty software lose revenue if their software is illegally  
20 pirated.

21           52. If companies such as Defendant Pratibha continue to illegally use copyrighted  
22 software in connection with the production or manufacture of goods sold or transported in or  
23 delivered to California, competition in the California apparel industry will be substantially  
24 harmed. California apparel manufacturers will face a cost disadvantage, and jobs in the industry  
25 may, as a result, continue the trend in the industry of migrating overseas. Software companies  
26 innovating and producing software for the apparel industry, facing piracy of such software and  
27 the consequent reduced returns for investing in such software, will reduce their investment and  
28 innovation in such software. As a result, apparel manufacturers will have reduced access to

1 efficiency-enhancing software that enables them to continue doing business in California in the  
2 face of lesser labor and other costs overseas.

3 **FIRST CAUSE OF ACTION**

4 **(Against Defendants for Violations of the Unfair Competition Law, Business &**  
5 **Professions Code, Section 17200)**

6 53. Plaintiff realleges, and incorporates herein by reference, the allegations in paragraphs  
7 1 through 52 inclusive, as though the same were set forth in their entirety herein.

8 54. In committing the acts alleged herein, Defendants, and each one of them, engaged in  
9 unfair competition, within the meaning of Business and Professions Code Section 17200.

10 **PRAYER**

11 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

12 55. That the Court adjudge and decree the conduct of Defendants to have been in  
13 violation of Section 17200 *et seq.*, of the California Business and Professions Code;

14 56. That, pursuant to Section 17203 of the Business and Professions Code, and the  
15 Court's inherent equity powers, Defendants, employees, agents, successors, assignees and  
16 representatives and all persons, corporations, or other entities acting under, by, through or on  
17 behalf of Defendants, or acting in concert or participation with or for Defendants with actual or  
18 constructive notice of this injunction, be permanently enjoined and restrained from engaging in or  
19 performing, directly or indirectly, any and all acts and practices in violation of Business and  
20 Professions Code Section 17200, *et seq.*, including, but not limited to, those practices set forth in  
21 the First Cause of Action;

22 57. That the Defendants, employees, agents, successors, assignees, and representatives  
23 and all persons, corporations, or other entities acting under, by, through, or on behalf of  
24 Defendants, or acting in concert or participation with or for Defendants with actual or  
25 constructive notice of this injunction, be enjoined and restrained from distributing or receiving  
26 any of Defendants' products in the State of California until such time as the Defendants certify to  
27 the Court that they are in compliance with the licensing requirements of all software programs  
28

1 that are used in connection with the production or manufacture of goods sold or transported in or  
2 delivered to California;

3 58. That the Defendants provide to the Office of the California Attorney General,  
4 Antitrust Law Section, a certified inventory under penalty of perjury of all software titles used in  
5 the operations of their business every six months for a period of five (5) years;

6 59. That the Court appoint a Trustee with the power to verify Defendants' compliance  
7 with the Court's orders. The cost associated with such Trustee shall be charged to the Defendants;

8 60. That upon application to the Court by the California Attorney General, a court  
9 approved trustee shall be granted full access to Defendants' computer systems in order to verify  
10 the Defendants' software licensing certifications.

11 61. Pursuant to Business and Professions Code Section 17206, that the Court assess a  
12 civil penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each  
13 violation of Business and Professions Code Section 17200.


14 62. That the People recover their costs of suit.

15 63. That the Court grant other legal and equitable relief as it may deem just and proper,  
16 including such other relief as the Court may deem just and proper to redress, and prevent  
17 recurrence of, the alleged violation and to remedy the anti-competitive effects of the Defendants'  
18 violations.

19  
20 Dated: January 24, 2013

Respectfully Submitted,

21 KAMALA D. HARRIS  
22 Attorney General of California  
23 NATALIE S. MANZO  
24 Supervising Deputy Attorney General

25   
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