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CENTER FOR ENVIRONMENTAL HEALTH

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

RG 11598595

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 YOKI SHOES LLC; THE FASHION)
EXCHANGE LLC; FORTUNE DYNAMIC)
17 INC.; FRANCESCA'S COLLECTIONS, INC.;)
LOVE CULTURE, INC.; LOVE CULTURE)
18 LLC; PRESTIGE FOOTWEAR INC.; SHM)
SHOES, LLC; SHOE REPUBLIC LA, INC.; and)
19 DOES 1 through 500, inclusive,)

20 Defendants.)
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Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of Defendants' footwear made with leather, vinyl or
10 imitation leather materials (the "Products"). Consumers and workers in California, including
11 pregnant women, are exposed to Lead when they wear, touch or handle the Products.

12 2. Under California's Proposition 65, Health and Safety Code §25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
16 introduce Products contaminated with significant quantities of Lead into the California
17 marketplace, exposing consumers of their Products and workers in California, many of whom are
18 pregnant women, to Lead.

19 3. Despite the fact that Defendants expose pregnant women, children, and
20 other people who come into contact with the Products to Lead, Defendants provide no warnings
21 whatsoever about the carcinogenic or reproductive hazards associated with these Lead exposures.
22 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
23 Code §25249.6.

24 PARTIES

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
26 non-profit corporation dedicated to protecting the public from environmental health hazards and
27 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

1 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
2 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
4 cases have resulted in significant public benefit, including the reformulation of thousands of
5 products to remove toxic chemicals to make them safer. CEH also provides information to
6 Californians about the health risks associated with exposure to hazardous substances, where
7 manufacturers and other responsible parties fail to do so.

8 5. Defendant THE FASHION EXCHANGE LLC is a person in the course of
9 doing business within the meaning of Health & Safety Code §25249.11. The Fashion Exchange
10 LLC manufactures, distributes and/or sells the Products for sale or use in California.

11 6. Defendant FORTUNE DYNAMIC INC. is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Fortune Dynamic Inc.
13 manufactures, distributes and/or sells the Products for sale or use in California.

14 7. Defendant FRANCESCA'S COLLECTIONS, INC. is a person in the
15 course of doing business within the meaning of Health & Safety Code §25249.11. Francesca's
16 Collections, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

17 8. Defendant LOVE CULTURE LLC is a person in the course of doing
18 business within the meaning of Health & Safety Code §25249.11. Love Culture LLC
19 manufactures, distributes and/or sells the Products for sale or use in California.

20 9. Defendant LOVE CULTURE, INC. is a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11. Love Culture, Inc.
22 manufactures, distributes and/or sells the Products for sale or use in California.

23 10. Defendant PRESTIGE FOOTWEAR INC. is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. Prestige Footwear Inc.
25 manufactures, distributes and/or sells the Products for sale or use in California.

26 11. Defendant SHM SHOES, LLC is a person in the course of doing business
27 within the meaning of Health & Safety Code §25249.11. SHM Shoes, LLC manufactures,
28 distributes and/or sells the Products for sale or use in California.

1 violations arise in the County of Alameda.

2 **BACKGROUND FACTS**

3 20. The People of the State of California have declared by initiative under
4 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
5 defects, or other reproductive harm.” Proposition 65, §1(b).

6 21. To effectuate this goal, Proposition 65 prohibits exposing people to
7 chemicals listed by the State of California as known to cause cancer, birth defects or other
8 reproductive harm without a “clear and reasonable warning” unless the business responsible for
9 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6
10 states, in pertinent part:

11 No person in the course of doing business shall knowingly and
12 intentionally expose any individual to a chemical known to the
13 state to cause cancer or reproductive toxicity without first giving
14 clear and reasonable warning to such individual. . .

15 22. On February 27, 1987, the State of California officially listed lead as a
16 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
17 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
18 the developing fetus, “female reproductive toxicity,” which means harm to the female
19 reproductive system, and “male reproductive toxicity,” which means harm to the male
20 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
21 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
22 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
23 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

24 23. On October 1, 1992, the State of California officially listed lead and lead
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
26 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
27 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
28 §27001(c); Health & Safety Code §25249.10(b).

24. Some of the Products are designed for and marketed to children. Young

1 children are also exposed to Lead from the Products when they touch or play with Products that
2 are owned, touched or handled by their parents or caretakers. In addition, young children are
3 exposed to Lead from the Products when they touch their hands to their mouths after their hands
4 have touched or handled the Products.

5 25. Young children are especially susceptible to the toxic effects of Lead.
6 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
7 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
8 absorb and retain more Lead in proportion to their weight than do adults. Young children also
9 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
10 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
11 small doses received in childhood, over time, can cause adverse health impacts, including but not
12 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
13 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
14 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

15 26. There is no safe level of exposure to Lead and even minute amounts of
16 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
17 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
18 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
19 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
20 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
21 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
22 children into adulthood and found a sevenfold increase in the risk for developing a reading
23 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
24 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
25 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
26 322:83-88, 1990.

27 27. Lead exposures for pregnant women are also of particular concern in light
28 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.

1 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
2 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
3 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*
4 *Perspectives* 114:5, 2006.

5 28. Lead is found in the fabric and/or material from which many of the
6 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather
7 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in
8 the Products and in the chemicals used in the leather tanning process.

9 29. Defendants' Products contain sufficient quantities of Lead such that
10 individuals, including pregnant women and children, who wear, touch and/or handle the Products
11 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur
12 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products
13 and dermal absorption directly through the skin when consumers wear, touch and/or handle the
14 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin
15 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or
16 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-
17 mouth contact after workers touch and/or handle the Products.

18 30. No clear and reasonable warning is provided with the Products regarding
19 the carcinogenic or reproductive hazards of Lead.

20 31. Any person acting in the public interest has standing to enforce violations
21 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
22 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
23 action within such time. Health & Safety Code §25249.7(d).

24 32. More than sixty days prior to naming each Defendant in this lawsuit, CEH
25 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
26 the District Attorneys of every county in California, the City Attorneys of every California city
27 with a population greater than 750,000 and to each of the named Defendants. In compliance with
28 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following

1 information: (1) the name and address of each violator; (2) the statute violated; (3) the time
2 period during which violations occurred; (4) specific descriptions of the violations, including (a)
3 the routes of exposure to Lead from the Products, and (b) the specific type of products sold and
4 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
5 chemical that is the subject of the violations described in each Notice.

6 33. In compliance with 8 C.C.R. §338(b), to the extent occupational exposures
7 are alleged, each of CEH's 60-Day Notices to the California Attorney General, the District
8 Attorneys of every county in California, the City Attorneys of every California city with a
9 population greater than 750,000 and to the named Defendants included the following statement:

10 This notice alleges the violation of Proposition 65 with respect to
11 occupational exposures governed by the California State Plan for
12 Occupational Safety and Health. The State Plan incorporates the
13 provisions of Proposition 65, as approved by Federal OSHA on
14 June 6, 1997. This approval specifically placed certain conditions
15 with regard to occupational exposures on Proposition 65, including
16 that it does not apply to the conduct of manufacturers occurring
17 outside the State of California. The approval also provides that an
18 employer may use the means of compliance in the general hazard
19 communication requirements to comply with Proposition 65. It
20 also requires that supplemental enforcement is subject to the
21 supervision of the California Occupational Safety and Health
22 Administration. Accordingly, any settlement, civil complaint, or
23 substantive court orders in this matter must be submitted to the
24 Attorney General.

25 34. CEH also sent a Certificate of Merit for each Notice to the California
26 Attorney General, the District Attorneys of every county in California, the City Attorneys of
27 every California city with a population greater than 750,000 and to the named Defendants. In
28 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each of the
Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
relevant and appropriate experience or expertise who reviewed facts, studies or other data
regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
obtained through such consultations, believes that there is a reasonable and meritorious case for a

1 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with
2 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the
3 Attorney General included factual information – provided on a confidential basis – sufficient to
4 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
5 counsel and the facts, studies or other data reviewed by such persons.

6 35. None of the public prosecutors with the authority to prosecute violations
7 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
8 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the
9 Notice.

10 36. Defendants both know and intend that consumers and workers in
11 California, including pregnant women, will wear, touch and/or handle the Products, thus
12 exposing them to Lead.

13 37. Under Proposition 65, an exposure is “knowing” where the party
14 responsible for such exposure has:

15 knowledge of the fact that a[n] . . . exposure to a chemical listed
16 pursuant to [Health and Safety Code §25249.8(a)] is occurring. No
17 knowledge that the . . . exposure is unlawful is required.

18 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
19 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
20 §12201).

21 38. Defendants have been informed of the Lead in their Products by the 60-
22 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

23 39. Nevertheless, Defendants continue to expose consumers and workers in
24 California, including pregnant women, to Lead without prior clear and reasonable warnings
25 regarding the carcinogenic and/or reproductive hazards of Lead.

26 40. CEH has engaged in good-faith efforts to resolve the claims alleged herein
27 prior to filing this Complaint.

28 41. Any person “violating or threatening to violate” Proposition 65 may be

1 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
2 violate” is defined to mean “to create a condition in which there is a substantial probability that a
3 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
4 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

5 **FIRST CAUSE OF ACTION**

6 **(Violations of the Health & Safety Code §25249.6 – Consumer Exposures)**
7 **(Against All Defendants)**

8 42. CEH realleges and incorporates by reference as if specifically set forth
9 herein Paragraphs 1 through 41, inclusive.

10 43. By placing the Products into the stream of commerce, each Defendant is a
11 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

12 44. Lead is a chemical listed by the State of California as known to cause
13 cancer and birth defects or other reproductive harm.

14 45. Defendants know that average use of the Products will expose users of the
15 Products to Lead. Defendants intend that the Products be used in a manner that results in users
16 of the Products being exposed to Lead contained in the Products.

17 46. Defendants have failed, and continue to fail, to provide prior clear and
18 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead contained in
19 the Products to users of the Products.

20 47. By committing the acts alleged above, Defendants have at all times
21 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
22 individuals to Lead without first giving clear and reasonable warnings to such individuals
23 regarding the carcinogenicity and reproductive toxicity of Lead.

24 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

25 **SECOND CAUSE OF ACTION**

26 **(Violations of the Health & Safety Code §25249.6 – Occupational Exposures)**
27 **(Defendants Fortune Dynamic Inc., Francesca’s Collections, Inc., Love Culture LLC, Love**
28 **Culture, Inc., Prestige Footwear Inc., Shoe Republic LA, Inc., and DOES 251**
through 500)

48. CEH realleges and incorporates by reference as if specifically set forth

1 herein Paragraphs 1 through 47, inclusive.

2 49. By placing the Products into the stream of commerce, each Defendant is a
3 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

4 50. Lead is a chemical listed by the State of California as known to cause
5 cancer and birth defects or other reproductive harm.

6 51. Defendants Fortune Dynamic Inc., Francesca's Collections, Inc., Love
7 Culture LLC, Love Culture, Inc., Prestige Footwear Inc., Shoe Republic LA, Inc., and DOES 251
8 through 500 (collectively, the "Occupational Exposure Defendants") know that the Products will
9 expose workers in California to Lead. Occupational Exposure Defendants intend that the
10 Products be touched or handled in a manner that results in workers in California being exposed to
11 Lead contained in the Products.

12 52. Occupational Exposure Defendants have failed, and continue to fail, to
13 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of
14 the Lead in the Products to workers in California that touch or handle the Products.

15 53. By committing the acts alleged above, Occupational Exposure Defendants
16 have at all times relevant to this Complaint violated Proposition 65 by knowingly and
17 intentionally exposing workers in California to Lead in their workplaces without first giving clear
18 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive
19 toxicity of Lead.

20 Wherefore, CEH prays for judgment against Occupational Exposure Defendants,
21 as set forth hereafter.

22 **PRAYER FOR RELIEF**

23 Wherefore, CEH prays for judgment against Defendants as follows:

24 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
25 penalties against each Defendant in the amount of \$2,500 per day for each violation of
26 Proposition 65 according to proof;

27 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
28 preliminarily and permanently enjoin Defendants from offering the Products for sale in

1 California without providing prior clear and reasonable warnings, as CEH shall specify in further
2 application to the Court;

3 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
4 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from the
5 manufacture, distribution, sale and/or use of Products sold by Defendants, as CEH shall specify
6 in further application to the Court;

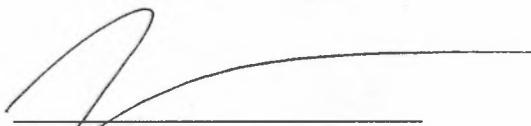
7 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
8 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

9 5. That the Court grant such other and further relief as may be just and
10 proper.

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12 Dated: October 5, 2011

Respectfully submitted,

13 LEXINGTON LAW GROUP

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16 _____
17 Howard Hirsch
18 Attorneys for Plaintiff
19 CENTER FOR ENVIRONMENTAL HEALTH
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