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CENTER FOR ENVIRONMENTAL HEALTH  
7

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 CENTER FOR ENVIRONMENTAL HEALTH, )  
12 a non-profit corporation, )  
13 Plaintiff, )  
14 v. )  
15 LULU NYC LLC, *et al.*, and Defendant DOES 1 )  
16 through 500, inclusive, )  
17 Defendants. )

18 CENTER FOR ENVIRONMENTAL HEALTH, )  
19 a non-profit corporation, )  
20 Plaintiff, )  
21 v. )  
22 YOKI SHOES LLC, *et al.*, and Defendant DOES )  
23 1 through 500, inclusive, )  
24 Defendants. )

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 12 2012

CLERK OF THE SUPERIOR COURT  
By PTW/GOKK Deputy

Lead Case No. RG 09-459448

[Consolidated with Case Nos. RG 10-494289; RG 10-494513; RG 10-494517; RG 11-598595; RG 11-598596; and RG 11-603764]

**FIRST AMENDED COMPLAINT-  
CENTER FOR ENVIRONMENTAL  
HEALTH V. YOKI SHOES LLC, CASE  
NO. RG 11-598595**

Health & Safety Code §25249.6, *et seq.*  
(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on information  
2 and belief and investigation of counsel, except for information based on knowledge, hereby  
3 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 DEMAND SHOES, LLC is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. The Demand Shoes, LLC  
10 manufactures, distributes and/or sells the Products for sale or use in California.

11           6. Defendant DIBA IMPORTS, L.P. is a person in the course of doing  
12 business within the meaning of Health & Safety Code §25249.11. The Diba Imports, L.P.  
13 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

20           9. Defendant KIMERA INTERNATIONAL is a person in the course of  
21 doing business within the meaning of Health & Safety Code §25249.11. Kimera International  
22 manufactures, distributes and/or sells the Products for sale or use in California.

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

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





1 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

2           25. On October 1, 1992, the State of California officially listed lead and lead  
3 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
4 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
5 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
6 §27001(c); Health & Safety Code §25249.10(b).

7           26. Some of the Products are designed for and marketed to children. Young  
8 children are also exposed to Lead from the Products when they touch or play with Products that  
9 are owned, touched or handled by their parents or caretakers. In addition, young children are  
10 exposed to Lead from the Products when they touch their hands to their mouths after their hands  
11 have touched or handled the Products.

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

22           28. There is no safe level of exposure to Lead and even minute amounts of  
23 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,  
24 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the  
25 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
26 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
27 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and  
28 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed

1 children into adulthood and found a sevenfold increase in the risk for developing a reading  
2 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
3 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low  
4 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*  
5 322:83-88, 1990.

6           29.     Lead exposures for pregnant women are also of particular concern in light  
7 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.  
8 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
9 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced  
10 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*  
11 *Perspectives* 114:5, 2006.

12           30.     Lead is found in the fabric and/or material from which many of the  
13 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
14 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in  
15 the Products and in the chemicals used in the leather tanning process.

16           31.     Defendants' Products contain sufficient quantities of Lead such that  
17 individuals, including pregnant women and children, who wear, touch and/or handle the Products  
18 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur  
19 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products  
20 and dermal absorption directly through the skin when consumers wear, touch and/or handle the  
21 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin  
22 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or  
23 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-  
24 mouth contact after workers touch and/or handle the Products.

25           32.     No clear and reasonable warning is provided with the Products regarding  
26 the carcinogenic or reproductive hazards of Lead.

27           33.     Any person acting in the public interest has standing to enforce violations  
28 of Proposition 65 provided that such person has supplied the requisite public enforcers with a

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
2 action within such time. Health & Safety Code §25249.7(d).

3           34. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
4 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
5 the District Attorneys of every county in California, the City Attorneys of every California city  
6 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
7 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following  
8 information: (1) the name and address of each violator; (2) the statute violated; (3) the time  
9 period during which violations occurred; (4) specific descriptions of the violations, including (a)  
10 the routes of exposure to Lead from the Products, and (b) the specific type of products sold and  
11 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed  
12 chemical that is the subject of the violations described in each Notice.

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

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

36. CEH also sent a Certificate of Merit for each Notice to the California



1 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
2 every California city with a population greater than 750,000 and to the named Defendants. In  
3 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each of the  
4 Certificates certified that CEH's counsel: (1) has consulted with one or more persons with  
5 relevant and appropriate experience or expertise who reviewed facts, studies or other data  
6 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information  
7 obtained through such consultations, believes that there is a reasonable and meritorious case for a  
8 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with  
9 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the  
10 Attorney General included factual information – provided on a confidential basis – sufficient to  
11 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's  
12 counsel and the facts, studies or other data reviewed by such persons.

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

17 38. Defendants both know and intend that consumers and workers in  
18 California, including pregnant women, will wear, touch and/or handle the Products, thus  
19 exposing them to Lead.

20 39. Under Proposition 65, an exposure is “knowing” where the party  
21 responsible for such exposure has:

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

25 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
27 §12201).

28 40. Defendants have been informed of the Lead in their Products by the 60-

1 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

2 41. Nevertheless, Defendants continue to expose consumers and workers in  
3 California, including pregnant women, to Lead without prior clear and reasonable warnings  
4 regarding the carcinogenic and/or reproductive hazards of Lead.

5 42. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
6 prior to filing this Complaint.

7 43. Any person “violating or threatening to violate” Proposition 65 may be  
8 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to  
9 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
10 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
11 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

12 **FIRST CAUSE OF ACTION**

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

15 44. CEH realleges and incorporates by reference as if specifically set forth  
16 herein Paragraphs 1 through 43, inclusive.

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

19 46. Lead is a chemical listed by the State of California as known to cause  
20 cancer and birth defects or other reproductive harm.

21 47. Defendants know that average use of the Products will expose users of the  
22 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
23 of the Products being exposed to Lead contained in the Products.

24 48. Defendants have failed, and continue to fail, to provide prior clear and  
25 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead contained in  
26 the Products to users of the Products.

27 49. By committing the acts alleged above, Defendants have at all times  
28 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing

1 individuals to Lead without first giving clear and reasonable warnings to such individuals  
2 regarding the carcinogenicity and reproductive toxicity of Lead.

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

4 **SECOND CAUSE OF ACTION**

5 **(Violations of the Health & Safety Code §25249.6 – Occupational Exposures)**  
6 **(Defendants Fortune Dynamic Inc., Francesca’s Collections, Inc., Kimera International,**  
7 **Love Culture, Inc., Shoe Republic LA, Inc., T.U.K., Inc. and DOES 251**  
8 **through 500)**

9 50. CEH realleges and incorporates by reference as if specifically set forth  
10 herein Paragraphs 1 through 49, inclusive.

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

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

15 53. Defendants Fortune Dynamic Inc., Francesca’s Collections, Inc., Kimera  
16 International, Love Culture, Inc., Shoe Republic LA, Inc., T.U.K., Inc., and DOES 251 through  
17 500 (collectively, the “Occupational Exposure Defendants”) know that the Products will expose  
18 workers in California to Lead. Occupational Exposure Defendants intend that the Products be  
19 touched or handled in a manner that results in workers in California being exposed to Lead  
20 contained in the Products.

21 54. Occupational Exposure Defendants have failed, and continue to fail, to  
22 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of  
23 the Lead in the Products to workers in California that touch or handle the Products.

24 55. By committing the acts alleged above, Occupational Exposure Defendants  
25 have at all times relevant to this Complaint violated Proposition 65 by knowingly and  
26 intentionally exposing workers in California to Lead in their workplaces without first giving clear  
27 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive  
28 toxicity of Lead.

Wherefore, CEH prays for judgment against Occupational Exposure Defendants,

1 as set forth hereafter.

2 **PRAYER FOR RELIEF**

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

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

7 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
8 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
9 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
10 application to the Court;

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

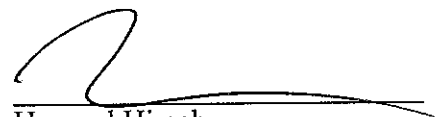
15 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other  
16 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

19  
20 Dated: April 11, 2012

Respectfully submitted,

21 LEXINGTON LAW GROUP

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24 Howard Hirsch  
25 Attorneys for Plaintiff  
26 CENTER FOR ENVIRONMENTAL HEALTH  
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