

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LEXINGTON LAW GROUP  
Howard Hirsch, State Bar No. 213209  
Lisa Burger, State Bar No. 239676  
503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
hhirsch@lexlawgroup.com  
lburger@lexlawgroup.com

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

CORNERSTONE APPAREL, INC.; DESS, INC.;  
WINSTON & BLUE, INC.; MYSTIC, INC.;  
BOOHOO.COM USA, INC.; BOOHOO.COM  
UK LIMITED; BOOHOO.COM USA LIMITED;  
and DOES 1 through 300, inclusive,

Defendants.

**FILED BY FAX**

ALAMEDA COUNTY

February 13, 2019

CLERK OF  
THE SUPERIOR COURT  
By Lynn Wiley, Deputy

CASE NUMBER:

**RG18933923**

Case No. RG 18-933923

**FIRST AMENDED 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"). Lead is a chemical known to the State of California to cause cancer and birth defects  
8 and other reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale, and/or use of two types of fashion accessories: (i) belts made with  
10 leather, vinyl, or imitation leather materials ("Belts"); and (ii) wallets, handbags, purses, and  
11 clutches made with leather, vinyl, or imitation leather materials (collectively, "Handbags"). Belts  
12 and Handbags are collectively referred to herein as "Fashion Accessories." Individuals in  
13 California, including pregnant women and children, are exposed to Lead when they wear, use,  
14 touch, or handle the Fashion Accessories.

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

22 3. Despite the fact that Defendants expose pregnant women, children, and other  
23 people who come into contact with their Fashion Accessories to Lead, Defendants provide no  
24 warnings whatsoever about these Lead exposures. Defendants' conduct thus violates the warning  
25 provision of Proposition 65. Health & Safety Code § 25249.6.

#### 26 **PARTIES**

27 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit  
28 corporation dedicated to protecting the public from environmental health hazards and toxic

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

10 5. Defendant CORNERSTONE APPAREL, INC. is a person in the course of doing  
11 business within the meaning of Health & Safety Code § 25249.11. Defendant CORNERSTONE  
12 APPAREL, INC. manufactures, distributes, and/or sells Belts for sale or use in California.

13 6. Defendant DESS, INC. is a person in the course of doing business within the  
14 meaning of Health & Safety Code § 25249.11. Defendant DESS, INC. manufactures, distributes,  
15 and/or sells Belts for sale or use in California.

16 7. Defendant WINSTON & BLUE, INC. is a person in the course of doing business  
17 within the meaning of Health & Safety Code § 25249.11. Defendant WINSTON & BLUE, INC.  
18 manufactures, distributes, and/or sells Belts for sale or use in California.

19 8. Defendant MYSTIC, INC. is a person in the course of doing business within the  
20 meaning of Health & Safety Code § 25249.11. Defendant MYSTIC, INC. manufactures,  
21 distributes, and/or sells Belts for sale or use in California.

22 9. Defendant BOOHOO.COM USA, INC. is a person in the course of doing business  
23 within the meaning of Health & Safety Code § 25249.11. Defendant BOOHOO.COM USA,  
24 INC. manufactures, distributes, and/or sells Handbags for sale or use in California.

25 10. Defendant BOOHOO.COM UK LIMITED is a person in the course of doing  
26 business within the meaning of Health & Safety Code § 25249.11. Defendant BOOHOO.COM  
27 UK LIMITED manufactures, distributes, and/or sells Handbags for sale or use in California.

28





1 Code § 25249.10(b).

2 23. 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(b); Health & Safety Code § 25249.10(b).

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

17 25. There is no safe level of exposure to Lead and even minute amounts of Lead  
18 exposure have been shown to permanently reduce mental capacity. Studies have repeatedly  
19 concluded that concentrations of Lead in children's blood previously deemed acceptable can have  
20 adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children with  
21 Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*  
22 348:16, 2003. Another study found that childhood Lead exposure predicts intellectual  
23 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead  
24 concentrations from childhood. Mazumdar, M., *et al.*, "Low-Level Environmental Lead  
25 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study," *Environmental*  
26 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, "Subclinical Lead Toxicity in U.S. Children  
27 and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the  
28

1 smallest detectable amount of blood Lead levels in children can mean the difference between an  
2 A or B grade in school).

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

9 27. The problem of Lead in Fashion Accessories is an industry-wide problem. As the  
10 California Office of Environmental Health Hazard Assessment (“OEHHA”) has found,  
11 “[p]otentially unsafe levels of lead in products such as jewelry and fashion accessories imported  
12 into the U.S. still pose a significant concern.” OEHHA, Initial Statement of Reasons for  
13 Proposed Adoption of New Title 27, Article 6, at 20 (Jan. 16, 2015).

14 28. Lead is found in the fabric and/or material from which many Fashion Accessories  
15 are made. Lead is found in Fashion Accessories as a stabilizer in the vinyl or imitation leather  
16 materials, as a chemical ingredient in some of the dyes, paints, and other coloring agents used in  
17 Fashion Accessories and in the chemicals used in the leather tanning process. Lead is also found  
18 in the metallic components such as zippers, zipper pulls, and buckles used on some Fashion  
19 Accessories.

20 29. Defendants’ Fashion Accessories contain sufficient quantities of Lead such that  
21 individuals, including pregnant women and children, who wear, use, touch, and/or handle the  
22 Fashion Accessories are exposed to Lead through the average use of such Fashion Accessories.  
23 The routes of exposure for the violations are ingestion via hand-to-mouth contact after consumers  
24 touch and/or handle Fashion Accessories, and dermal absorption directly through the skin when  
25 consumers take on or off Fashion Accessories or wear, touch, and/or handle Fashion Accessories.

26 30. Some of the Fashion Accessories are designed for and marketed to children.  
27 Young children are also exposed to Lead from Fashion Accessories when they touch or play with  
28 Fashion Accessories that are owned or used by their parents or caretakers. In addition, young

1 children are exposed to Lead from Handbags when they eat food that is stored or carried in  
2 Handbags or touch or play with non-food items that are stored or carried in Handbags. Additional  
3 childhood exposures to Lead occur when children touch their hands to their mouths after their  
4 hands have touched Fashion Accessories or items stored or carried in Handbags.

5 31. No clear and reasonable warning is provided with the Fashion Accessories  
6 regarding the exposures to Lead which occur through ordinary use of the Fashion Accessories.

7 32. Any person acting in the public interest has standing to enforce violations of  
8 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
9 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
10 within such time. Health & Safety Code § 25249.7(d).

11 33. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
12 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to  
13 the District Attorneys of every county in California, to the City Attorneys of every California city  
14 with a population greater than 750,000, and to each of the named Defendants. In compliance with  
15 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
16 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
17 time period during which violations occurred; (4) specific descriptions of the violations, including  
18 (a) the routes of exposure to listed chemicals from Fashion Accessories, and (b) the specific type  
19 of Fashion Accessories sold and used in violation of Proposition 65; and (5) the name of the  
20 specific Proposition 65-listed chemical that is the subject of the violations described in each  
21 Notice.

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



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

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

11 36. Defendants both know and intend that consumers in California, including pregnant  
12 women and children, will wear, use, touch, and/or handle the Fashion Accessories, thus exposing  
13 them to Lead through the average use of the Fashion Accessories.

14 37. Nevertheless, Defendants continue to expose consumers, including pregnant  
15 women and children, to Lead without prior clear and reasonable warnings regarding the  
16 carcinogenic and reproductive hazards of Lead.

17 38. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
18 filing this Complaint.

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

24 **FIRST CAUSE OF ACTION**  
25 **(Violations of Health & Safety Code § 25249.6)**  
26 **(Against Belts Defendants Only)**

27 40. CEH realleges and incorporates by reference as if specifically set forth herein  
28 Paragraphs 1 through 39, inclusive.

1 41. Lead is a chemical listed by the State of California as known to cause cancer, birth  
2 defects, and other reproductive harm.

3 42. By placing their Belts into the stream of commerce, each Belts Defendant is a  
4 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

5 43. Belts Defendants know that the average use of their Belts will expose users of their  
6 Belts to Lead. Belts Defendants intend that their Belts be used in a manner that results in users of  
7 their Belts being exposed to the Lead contained therein.

8 44. Belts Defendants have failed, and continue to fail, to provide clear and reasonable  
9 warnings to users of their Belts regarding the exposures to Lead which occur from use of their  
10 Belts.

11 45. By committing the acts alleged above, Belts Defendants have at all times relevant  
12 to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to  
13 Lead without first giving clear and reasonable warnings to such individuals regarding those  
14 exposures.

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

16 **SECOND CAUSE OF ACTION**  
17 **(Violations of Health & Safety Code § 25249.6)**  
18 **(Against Handbags Defendants Only)**

19 46. CEH realleges and incorporates by reference as if specifically set forth herein  
20 Paragraphs 1 through 45, inclusive.

21 47. Lead is a chemical listed by the State of California as known to cause cancer, birth  
22 defects, and other reproductive harm.

23 48. By placing their Handbags into the stream of commerce, each Handbags  
24 Defendant is a person in the course of doing business within the meaning of Health & Safety  
25 Code § 25249.11.

26 49. Handbags Defendants know that the average use of their Handbags will expose  
27 users of their Handbags to Lead. Handbags Defendants intend that their Handbags be used in a  
28 manner that results in users of their Handbags being exposed to the Lead contained therein.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Dated: February 13, 2019

Respectfully submitted,

LEXINGTON LAW GROUP



---

Howard Hirsch  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH