

1 **TREEHOUSE LAW, LLP**

2 Benjamin Heikali (SBN 307466)

3 Ruhandy Glezakos (SBN 307473)

4 Joshua Nassir (SBN 318344)

5 Nicole Babaknia (SBN 334526)

6 2121 Avenue of the Stars, Suite 2580

7 Los Angeles, CA 90067

8 Telephone: (310) 751-5948

9 bheikali@treeouselaw.com

10 rglezakos@treeouselaw.com

11 jnassir@treeouselaw.com

12 nbabaknia@treeouselaw.com

13 *Attorneys for Plaintiffs and the Putative*  
14 *Classes*

15 **IN THE UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 Nikelle Suarez, Leticia Nyberg, and  
18 Kerriann Salmon, on behalf of themselves  
19 and all others similarly situated,

20 Plaintiffs,

21 v.

22 Juvia's Place LLC,

23 Defendant.

24 Case No.:

25 **CLASS ACTION COMPLAINT**

26 **JURY TRIAL DEMANDED**

1 Plaintiffs Nikelle Suarez, Leticia Nyberg, and Kerriann Salmon (“Plaintiffs”), on behalf of  
2 themselves and all others similarly situated, by and through their attorneys, bring this Class Action  
3 Complaint against Juvia’s Place LLC (“Defendant”), based upon personal knowledge as to  
4 themselves, and upon information, investigation and belief of their counsel.

5 **INTRODUCTION**

6 1. This class action seeks to challenge Defendant’s deceptive marketing, advertising, and  
7 sale of certain Juvia’s Place eyeshadow palettes (the “Products”) containing synthetic color additives  
8 that are unsafe and unfit for use around the eye.

9 2. As further outlined and depicted below, Defendant has marketed the Products with  
10 affirmative representations that lead reasonable consumers to believe they can safely use, and should be  
11 using, the Products as eyeshadows around the eye, when that is not the case. Moreover, Defendant has  
12 failed to disclose that the Products contain unsafe, unfit, and unapproved color additives for use in the eye  
13 area.

14 3. Based on Defendant’s representations and omissions, consumers, including Plaintiffs,  
15 have purchased the Products under the reasonable belief that all the color palettes in the Products  
16 (including their added color additives), were all safe and fit for use around the eye.

17 4. Unbeknownst to Plaintiffs and other consumers, the Products contain color additives that  
18 are unsafe, unfit, and not even approved for use in eyeshadows.

19 5. Had consumers been aware that the Products contained color additives that are unsafe,  
20 unfit and unapproved for use in eyeshadows, they would not have purchased the Products or would  
21 have paid substantially less for them. Accordingly, Plaintiffs and Class members were deprived of the  
22 benefit of their bargain and were therefore financially injured by Defendant’s conduct.

23 **JURISDICTION AND VENUE**

24 6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of  
25 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal Rules  
26 of Civil Procedure, there are at least thousands of proposed Class members, the aggregate amount in  
27  
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1 controversy exceeds \$5,000,000 exclusive of interest and costs, and Defendant is a citizen of a state  
2 different from at least some members of the proposed Classes, including Plaintiffs.

3 7. This Court has personal jurisdiction over Defendant because Defendant has sufficient  
4 minimum contacts in California, or otherwise intentionally avails itself of the markets within  
5 California through its sale of the Products and other products in California, to California consumers.

6 8. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b)(2) because a  
7 substantial part of the events or omissions giving rise to the claims alleged occurred in this District.  
8 Specifically, Plaintiff Suarez resides in this District and she purchased one of the Products in this  
9 District.

10 **PLAINTIFFS**

11 9. Plaintiff Suarez is a citizen of California and currently resides in Citrus Heights,  
12 California. In or around August 6, 2020, Plaintiff Suarez purchased The Warrior 3 eyeshadow palette  
13 from the Ulta Beauty online webpage. In or around November 25, 2020, Plaintiff Suarez purchased  
14 The Nubian Royalty Gift Set (containing The Nubian Royal eyeshadow palette), The Berries  
15 eyeshadow palette, The Chocolates eyeshadow palette, The Mauves eyeshadow palette, The Sweet  
16 Pinks eyeshadow palette, and The Nudes eyeshadow palette, all from their respective Ulta Beauty  
17 online webpages. In or around November 1, 2021, Plaintiff Suarez purchased The Blushed Rose  
18 eyeshadow palette from the Ulta Beauty online webpage. In or around September 8, 2022, Plaintiff  
19 Suarez purchased the Garden of Juvia eyeshadow palette from the Ulta Beauty online webpage. Based  
20 on all the Products being advertised as eyeshadows on these webpages, and the lack of any disclosure  
21 or other qualifying statement informing her that the Products contained color additives that were not  
22 safe, fit, and approved for use around the eye area, Plaintiff Suarez reasonably believed all the  
23 individual color palettes in the Products (including all their color additives) were indeed safe, fit, and  
24 approved for use in the eye area. Upon purchase and use of these Products, Plaintiff Suarez  
25 experienced unusual color staining around her eyes after removing the eyeshadows from her eyes.  
26 Had Plaintiff Suarez known that the Products contained unsafe, unfit, and unapproved color additives,  
27 she would not have purchased the Products. As a result, she has been injured as a direct result of  
28 Defendant's misleading advertising and omissions.

1           10. Plaintiff Nyberg is a citizen of California and currently resides in Los Angeles,  
2 California. In or around mid-2021, Plaintiff Nyberg purchased The Masquerade Mini eyeshadow  
3 palette from a brick-and-mortar Ulta Beauty store in Los Angeles County. Based on the images of  
4 three women with eyeshadow applied on their eyes on the front label of the Product, as well as the  
5 lack of any conspicuous disclosure or other qualifying statement on the front label informing her that  
6 the Product contained color additives that were not safe, fit, and approved for use around the eye area,  
7 Plaintiff Nyberg reasonably believed all the individual color palettes in the Product (including all  
8 their color additives) were indeed safe, fit, and approved for use in the eye area. Upon purchase and  
9 use of the Product, Plaintiff Nyberg experienced itching and swelling on her eyelids, as well as teary  
10 eyes. Had Plaintiff Nyberg known that the Product contained unsafe, unfit, and unapproved color  
11 additives, she would not have purchased the Product. As a result, she has been injured as a direct  
12 result of Defendant’s misleading advertising and omissions.

13           11. Plaintiff Salmon is a citizen of New York and currently resides in Brooklyn, New  
14 York. In or around October 20, 2023, Plaintiff Salmon purchased the Juvia’s Place Culture 2  
15 eyeshadow palette from the Shop app. Based on the various references to the word “eyeshadow” on  
16 the product listing,<sup>1</sup> and the lack of any conspicuous disclosure or other qualifying statement on the  
17 page informing her that the Product contained color additives that were not safe, fit, and approved for  
18 use around the eye area, Plaintiff Salmon reasonably believed all the individual color palettes in the  
19 Product (including all their color additives) were indeed safe, fit, and approved for use in the eye area.  
20 After purchasing this Product, Plaintiff Salmon eventually used the “Mother Land,” “Woroba,”  
21 “Jollof,” and “Lagos” color palettes within the Product, and experienced unusual color staining  
22 around her eyes after removing these specific eyeshadows from her eyes. The staining lasted for  
23 several days and would not come off with makeup remover. As a result of staining, Plaintiff Salmon’s  
24 eyes also became irritated and sore. In or around November 16, 2023, Plaintiff Salmon separately  
25 purchased the Juvia’s Place Culture eyeshadow palette from the Shop app. Based on the various  
26 references to the word “eyeshadow” on the product listing,<sup>2</sup> and the lack of any conspicuous  
27

28 <sup>1</sup> <https://shop.app/products/6767867428967?variantId=40121398198375&fromShop=true> (last visited April 23, 2024)

<sup>2</sup> <https://shop.app/products/6633616015463?variantId=39613256630375&fromShop=true> (last visited April 23, 2024)

1 disclosure or other qualifying statement on the page informing her that the Product contained color  
2 additives that were not safe, fit, and approved for use around the eye area, Plaintiff Salmon reasonably  
3 believed all the individual color palettes in the Product (including all their color additives) were  
4 indeed safe, fit, and approved for use in the eye area. After purchasing this Product, Plaintiff Salmon  
5 eventually used the “Jigawa,” “Edo,” “Wolof,” and “Katanga” color palettes within the Product, and  
6 experienced unusual color staining around her eyes after removing these specific eyeshadows from  
7 her eyes. The staining lasted for several days and would not come off with makeup remover. As a  
8 result of staining, Plaintiff Salmon’s eyes also became irritated and sore. Had Plaintiff Salmon known  
9 that the Products contained unsafe, unfit, and unapproved color additives, she would not have  
10 purchased the Products, or would have paid significantly less for them. As a result, she has been  
11 injured as a direct result of Defendant’s misleading advertising and omissions.

12         12. Despite Defendant’s misrepresentations and omissions, Plaintiffs Salmon and Suarez  
13 would purchase the Products, as advertised, if they did not contain unsafe, unfit, and unapproved  
14 color additives. Although Plaintiffs Salmon and Suarez regularly shop at stores, including online  
15 retailers, that carry the Products and other eyeshadow products, absent an injunction of Defendant’s  
16 deceptive advertising and omissions, Plaintiffs Salmon and Suarez will be unable to rely with  
17 confidence on Defendant’s advertising of the Products in the future. Furthermore, while Plaintiffs  
18 Salmon and Suarez currently believe the Products’ advertising is misleading, they lack personal  
19 knowledge as to Defendant’s specific business practices, and thus, they will not be able to readily  
20 determine whether the Products contain unsafe, unfit, and unapproved color additives or not. This is  
21 especially true because the advertising of the Products does not adequately disclose that the Products  
22 contain unsafe, unfit, and unapproved color additives, or that certain color palettes should not be used  
23 around the eye. This leaves doubt in Plaintiffs Salmon and Suarez’s minds as to the possibility that  
24 the Products in the future could be made in accordance with the Products’ representations as  
25 eyeshadows. This uncertainty, coupled with their desire to purchase the Products, is an ongoing injury  
26 that can and would be rectified by an injunction enjoining Defendant from making the alleged  
27 misleading affirmative representations or forcing Defendant to make appropriate disclosures. In  
28 addition, absent an injunction, other Class members will continue to purchase the Products,

1 reasonably but incorrectly believing that the Products are safe eyeshadows that contain only safe, fit,  
2 and approved color additives.

3 **DEFENDANT**

4 13. Defendant Juvia’s Place LLC is a limited liability company organized and existing  
5 under the laws of the State of Wyoming, with its principal place of business located in Secaucus, New  
6 Jersey. Defendant Juvia’s Place LLC, through its agents, is responsible for the manufacturing,  
7 marketing, advertising, packaging, distribution, and sale of the Products in the U.S., including in  
8 California and in this District specifically.

9 **FACTUAL ALLEGATIONS**

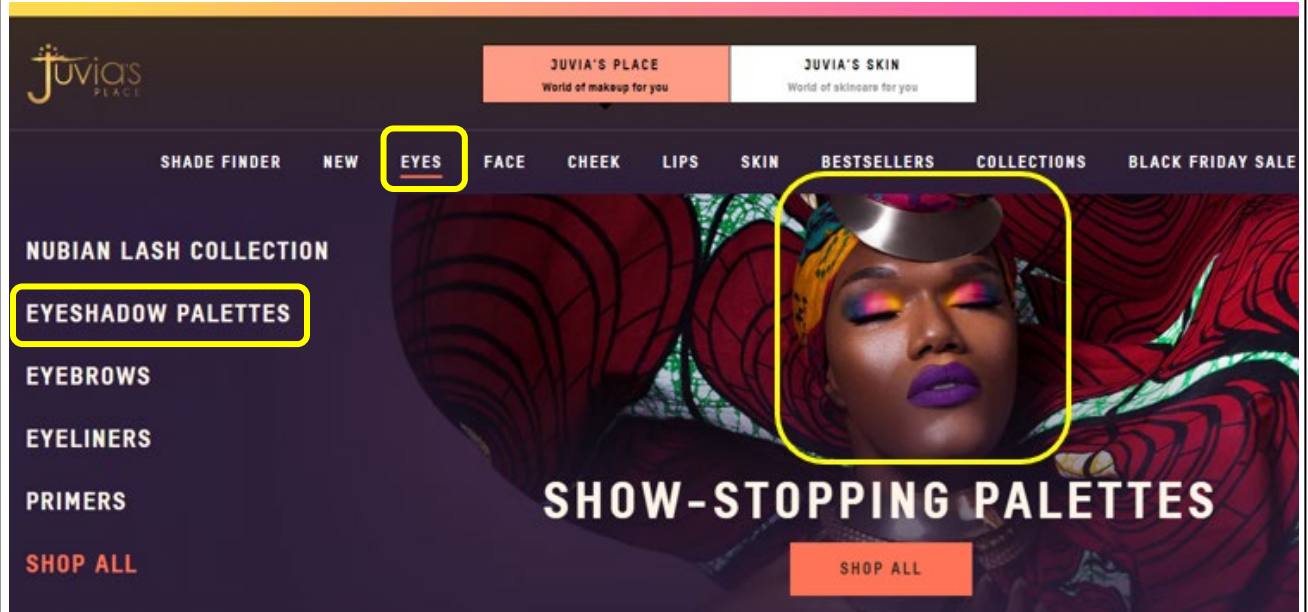
10 **I. Defendant Markets The Products As Eyeshadows To Be Used On The Eye Area**

11 14. Defendant, a prominent American manufacturer specializing in makeup and cosmetic  
12 products, sells Juvia’s Place brand beauty products and cosmetics, including the challenged eyeshadow  
13 palettes. Operating primarily through its website, in addition to e-commerce platforms such as the  
14 Shop app, Ulta.com, and in Ulta Beauty brick and mortar stores, Defendant has garnered a substantial  
15 customer base both domestically and internationally.

16 15. The Products challenged in this Complaint encompass the following eyeshadow  
17 palettes manufactured, labeled, distributed, and sold by Defendant: Culture, Culture 2, The Coffee  
18 Shop, Afrogalactic, Garden of Juvia, The Zulu, The Candy Shop, The Chocolates, The Berries, The  
19 Sweet Pinks, The Warrior 3, Olori 1, Olori 2, and Olori 3, The Bronzed and Bronzed Rustic, The  
20 Nubian and The Nubian 2, The Nubian Royal, The Wahala, The Wahala 2, The Magic Mini, Fula,  
21 Blushed Rose, Vanessa, The Masquerade Mini, The Festival, The Mauves, the Nudes palettes  
22 (collectively, the “Product(s)”).

23 16. The Products are eyeshadow cosmetics clearly intended for use around the eye and  
24 therefore are marketed by Defendant as such.

25 17. As an initial matter, on the Juvia’s Place website, Defendant categorizes and lists the  
26 Products as “Eyeshadow Palettes” under the “Eyes” tab. On the same pop-up menu, there is an image  
27 of a woman with Juvia’s Place eyeshadow clearly applied to her eyes, as emphasized by the text over  
28 stating “show-stopping palettes.” *See below* (yellow outlining added for emphasis):



18. Moreover, on the specific Product pages on the Juvia's Place website, Defendant consistently refers to the Products as "Eyeshadow" and sometimes offers "Eyeshadow Shade Descriptions" for every specific color palette. Several examples of these pages are depicted below. See images on next pages (yellow outlining added for emphasis):



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## The Wahala Eyeshadow Palette

\$38.00

- 1 + **ADD TO BAG**

or 4 interest-free payments of \$9.50 with **afterpay** [Learn More](#)

The Wahala Eyeshadow Palette lets you unleash your fiercest eyeshadow looks with its expansive array of 20 bold and intense shades--including green eyeshadow, orange eyeshadow, and cosmetic glitter eyeshadow, too. Wa-ha-la is a Nigerian Pidgin word meaning drama, trouble, and intensity.

We were heavily inspired by the craftsmanship of African Masks, which embody traditional culture and are used in ceremonial activities. A mask must come to life by the wearer of the mask to symbolize a mood. We played around with very symbolic colors which represent unity, love, excitement, fruitfulness, boldness, authority, and lastly, growth and healing. All of which can be dramatic depending on the wearer of the mask.

Featuring shades made to play, you'll find full-spectrum color with all-day-every-day wearability, making it the best rainbow eyeshadow palette around.

### EYESHADOW SHADE DESCRIPTIONS:

- BE YOU: A matte dark berry burgundy
  - UNAFRAID: A shimmery medium-toned purple with a frosty finish
  - ENVY: A beautiful shimmer pink-violet duo chrome with light blue pearls
  - WOKE: A matte lavender violet
  - STANDUP: A shimmery champagne
  - PRIDE: A soft muted matte mauve-y nude
  - SIS: A matte cool toned dark brown
  - UNSHOOK: A deep shimmery pewter
  - FIGHTER: A metallic vibrant light medium green
  - GOSSIP: A intense buttery metallic gold with a green undertone
  - OVER SABI: A dark yellow mustard brown
- SKU: 1000798**



HOME > EYESHADOW PALETTES > CULTURE EYESHADOW PALETTE



### Culture Eyeshadow Palette

Out of stock

JOIN THE WAITLIST

afterpay available for orders between \$1 - \$2,000 [Learn More](#)

Culture Collection

The Explorer

Join Us as we explore the beautiful horizons and depths of cultural escapade. Unleash your fiercest eyeshadow looks with its expansive array of 30 bold and intense shades—including rich yellows, greens, alluring pinks, majestic purples, oranges, duo chromatic shades, and cosmetic glitter eyeshadow, too.

We were heavily inspired by the craftsmanship of West African Masks, which embodies the traditional culture and are used in ceremonial activities. A mask must come to life by the wearer to symbolize a mood. We played around with very symbolic colors, which represent unity, love, excitement, fruitfulness, boldness, authority, and, lastly, growth and healing. All of which can be dramatic depending on the wearer of the mask.

Featuring shades made to play, you'll find full-spectrum color with all-day-every-day wearability, making it the best rainbow eyeshadow palette around.

HOME > EYESHADOW PALETTES > WARRIOR 3 EYESHADOW PALETTE



### Warrior 3 Eyeshadow Palette

\$20.00

ADD TO BAG

Buy with **shop Pay**

More payment options

or 4 interest-free payments of \$5.00 with **afterpay** [Learn More](#)

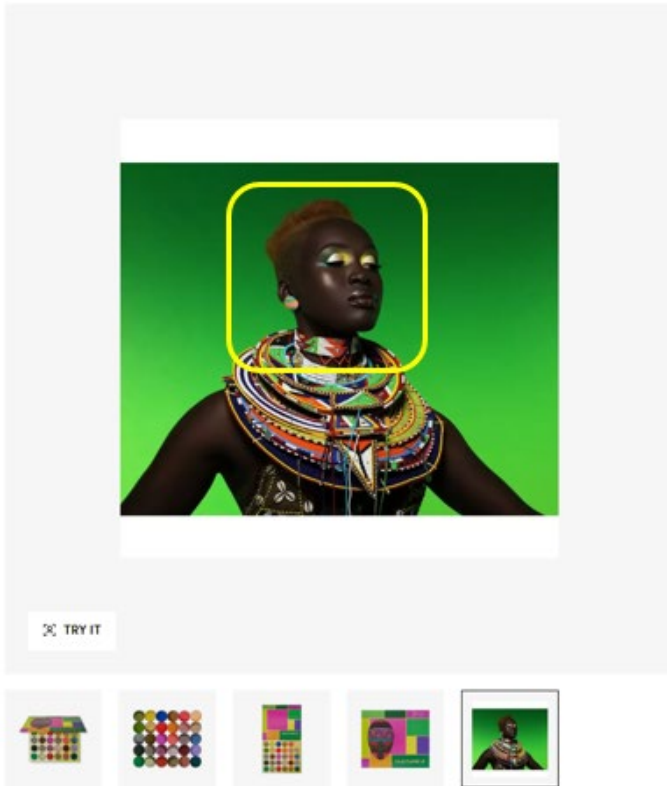
The Warrior 3 Palette is eye-catching in all the right ways. Unleash your inner warrior with 9 seriously show-stopping shades—like deep emerald green, fire engine red, vibrant violet, cerulean blue—that take every eyeshadow look to a whole new level of fierce. Because every day deserves the perfect pop of color, and this is the eyeshadow palette that lets every goddess truly glow.

SKU: 1000109

Ingredients

1 19. Defendant’s advertising of the Products on Ulta.com is substantially similar to its  
2 advertising on its own website, as the Products are marketed on Ulta.com for use as “eyeshadows”  
3 around the eye. For example, on the Ulta.com page for the Culture 2 Product, the Product is described  
4 as an “Eyeshadow Palette” and the page features an image of a woman wearing the eyeshadow on  
5 and around her eyes. *See below* (yellow outlining added for emphasis).

6 Home / Makeup / Eyes / Eyeshadow Palettes



Juvia's Place

## Culture 2 Eyeshadow Palette

Item 2612858

4.7 ★★★★★ 28 Reviews ↓

\$38.00

or 4 interest-free payments of \$9.50 with [afterpay](#) ⓘ

\$10 off any \$50 qualifying pickup order →

ADD TO BAG



Check in-store availability



Earn points with this purchase.®

SIGN IN OR CREATE AN ACCOUNT

### Summary

Come again to join Juvia's Place on another journey to explore the mesmerizing depths of different traditions. Discover the diverse world of cultural exploration within this striking and intense palette. Introducing the Culture 2 Eyeshadow Palette.



1           20.     In store, at Ulta Beauty brick-and-mortar stores, the Products are similarly advertised  
2 as “Eyeshadow Palettes.” *See below examples.*<sup>3</sup>



3 Images taken on March 30, 2024, at an Ulta Beauty store in Culver City, California.

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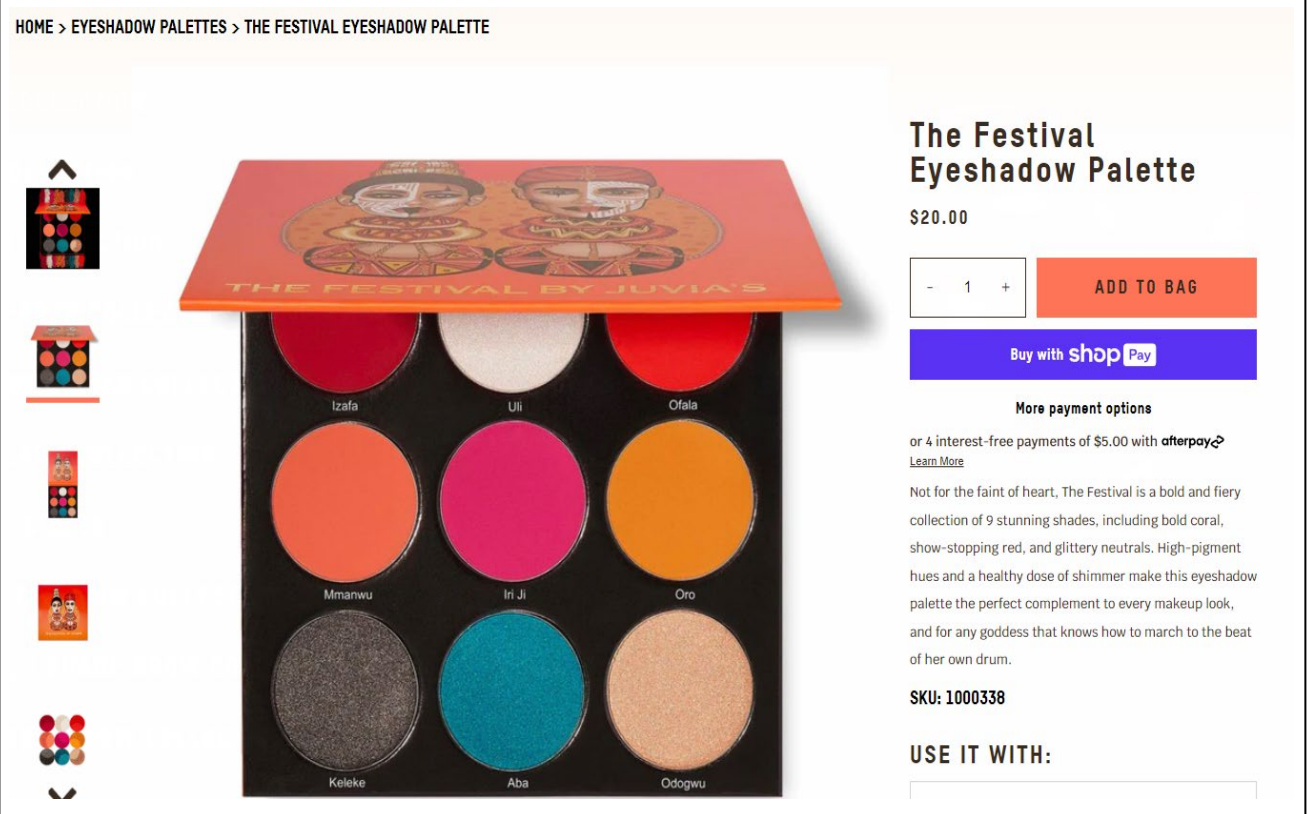


1 21. Through its foregoing marketing materials and affirmative product descriptions,  
2 Defendant has consistently portrayed the Products, and all their ingredients, as safe, suitable, and  
3 intended for use as eyeshadows.

4 22. Based on Defendant's affirmative misrepresentations outlined herein, reasonable  
5 consumers are led to believe that the Products, and all their color additives, are safe and fit for use  
6 around the eye as eyeshadows.

7  
8 **II. Defendant Fails To Adequately Disclose That The Products Contain Color Additives**  
9 **That Are Unsafe, Unfit, And Unapproved For Use Around The Eye, Or That Certain**  
10 **Color Palettes Within The Products Are Not Intended For Use Around The Eye Area**

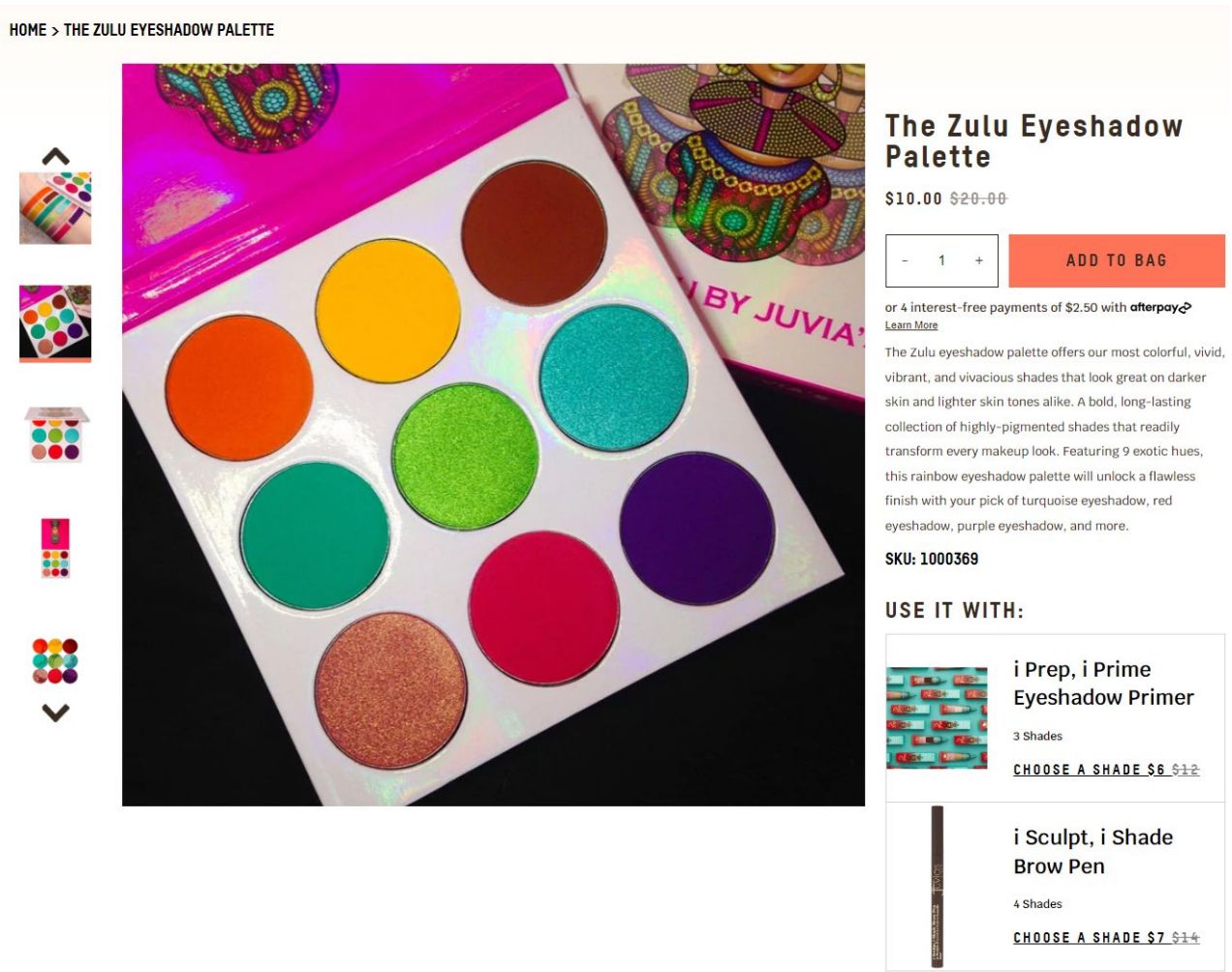
11 23. Despite marketing the Products as eyeshadows intended for use around the eye,  
12 Defendant fails to adequately disclose that certain color palettes in the Products contain color  
13 additives that are unsafe, unfit, and unapproved for use around the eye, or that certain color palettes  
14 in the Products should not be used around the eye area. As depicted through some examples below,  
15 the specific Product webpages on the Juvia's Place website make no such conspicuous disclosures.  
16 *See below examples.*





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HOME > THE ZULU EYESHADOW PALETTE



**The Zulu Eyeshadow Palette**

\$10.00 ~~\$20.00~~


- 1 + **ADD TO BAG**


or 4 interest-free payments of \$2.50 with [afterpay](#) Learn More

The Zulu eyeshadow palette offers our most colorful, vivid, vibrant, and vivacious shades that look great on darker skin and lighter skin tones alike. A bold, long-lasting collection of highly-pigmented shades that readily transform every makeup look. Featuring 9 exotic hues, this rainbow eyeshadow palette will unlock a flawless finish with your pick of turquoise eyeshadow, red eyeshadow, purple eyeshadow, and more.

**SKU: 1000369**

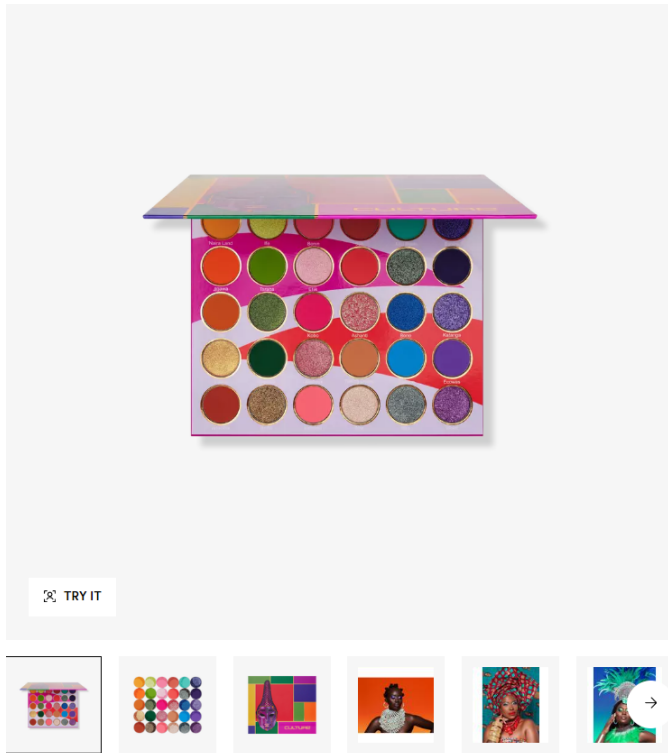
**USE IT WITH:**

 **i Prep, i Prime Eyeshadow Primer**  
3 Shades  
**CHOOSE A SHADE \$8 ~~\$12~~**

 **i Sculpt, i Shade Brow Pen**  
4 Shades  
**CHOOSE A SHADE \$7 ~~\$14~~**

24. The same is true for the Product pages on Ulta.com, which contain no such disclosure.  
*See example below.*

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## Culture Eyeshadow Palette

Only here | Item 2596031

4.7 ★★★★★ 188 Reviews ↓

**\$38.00**

or 4 interest-free payments of \$9.50 with **afterpay**®

\$10 off any \$50 qualifying pickup order →

ADD TO BAG



Check in-store availability

Earn points with this purchase.®

SIGN IN OR CREATE AN ACCOUNT

### Summary

Join Juvia's Place on their explorative adventure of the beautiful and rich culture of Africa. A show stopping burst of unique and irresistible shades destined to make any look pop!

Details —

### Shades

- Row 1- Naira Land (matte orange), Ife (soft green shimmer), Benin (matte pink), 9JA (matte clay), Afro Beats (Matte Turquoise), Boronu (Shimmer Blue)
- Row 2- Jigawa (Matte Tangerine orange), Taraba (matte olive green), Efik (shimmer cream), Delta (matte red orange), Yoruba (shimmer turquoise), Edo (matte midnight navy blue)
- Row 5- Wazobia (matte chestnut), Biafra (shimmer gold), Kalabari (matte peachy pink), Ijaw (shimmer champagne), San (shimmer sky blue), Wolof (shimmer lilac)

### **III. The Products Contain Color Additives That Are Unsafe and Unfit For Use In Cosmetic Products Intended For Use Around the Eye**

25. Despite Defendant's affirmative representations and omissions about the Products, the Products contain at least the following color additives that are unsafe and unfit for use in cosmetics to be used around the eye:

- Culture: Red 6, 7, 21, 27, and 28; Yellow 6 and 10.
- Culture 2: Red 6, 7, 21, 27, and 28; Yellow 6 and 10.
- The Coffee Shop: Red 6, 7, and 27; Yellow 6.

- 1 D. Afrogalactic: Red 6, 21, 27, and 28; Yellow 6.
- 2 E. Garden of Juvia: Red 21, 27, and 28; Yellow 6.
- 3 F. The Zulu: Red 6, 7 and 27; Yellow 10.
- 4 G. The Candy Shop: Red 6, 7, 21, 27 and 28; Yellow 6 and 10.
- 5 H. The Chocolates: Yellow 6.
- 6 I. The Berries: Red 7 and 27.
- 7 J. The Sweet Pinks: Red 21, 27; Yellow 10.
- 8 K. The Warrior 3: Red 6 and 27.
- 9 L. Olori 1: Red 6; Yellow 10.
- 10 M. Olori 2: Red 6, 21, 27 and 28.
- 11 N. Olori 3: Red 6, 7, and 27; Yellow 6.
- 12 O. The Bronzed/ Bronzed Rustic: Red 6; Yellow 6.
- 13 P. The Nubian: Red 6 and 21; Yellow 6.
- 14 Q. The Nubian 2: Red 6, 27, and 33; Yellow 6.
- 15 R. The Nubian Royal: Red 7 and 27.
- 16 S. The Wahala: Red 6, 7, 21 and 27; Yellow 6 and 10.
- 17 T. The Wahala 2: Red 7, 21, 27; Yellow 6 and 10.
- 18 U. The Magic Mini: Red 6, 7, and 27; Yellow 6 and 10.
- 19 V. Fula: Red 6, 7, 21, and 28; Yellow 6.
- 20 W. Blushed Rose: Red 6, 7, 21 and 27; Yellow 6.
- 21 X. Vanessa: Red 7 and 27.
- 22 Y. The Masquerade Mini: Red 6, 7, 27, and 33; Yellow 6.
- 23 Z. The Festival: Red 6, 7, 21, 27; Yellow 6.
- 24 AA. The Mauves: Red 27 and 33.
- 25 BB. The Nudes: Yellow 6.
- 26 26. The foregoing color additives are unsafe and unfit for use around the eye. Indeed, the
- 27 risks and harm associated with using these synthetic colors around the eye are well documented.
- 28 27. Spectra Colors Corporation's Safety Data Sheets for Red No. 6, 7, 21, 27, 28, and 33

1 each state that these colors “cause[] eye irritation” and that if the colors gets into the eye, one should  
 2 “Rinse cautiously with water for several minutes.”<sup>4</sup> Some of the safety data sheets also warn to  
 3 “handle with care” and “avoid eye and skin contact.”<sup>5</sup>

4 28. These warnings are for good reason. According to Gloria Lu, a cosmetic chemist, red  
 5 pigments can cause staining, skin irritation, and allergies, and the FDA’s refusal to permit the use of  
 6 certain colors in eye cosmetics likely means that the pigments underwent safety testing and were not  
 7 approved for eye area use.<sup>6</sup>

8 29. Similarly, the yellow pigments used by the Defendant in the Products have also  
 9 specifically been shown to be unsafe around the eye. For example, Flinn Scientific that Yellow 6 is a  
 10 hazard for “skin and serious eye damage, corrosion, or irritation.”<sup>7</sup> The same is true for Yellow 10.<sup>8</sup>

11 30. Moreover, the skin around the eye is extremely sensitive. As Dr. John Zampella,  
 12 assistant professor of dermatology at NYU explains, “eyelid skin is the thinnest skin on your body...  
 13 irritating makeup and skin-care products can penetrate it more easily, and therefore it’s more sensitive  
 14 to irritants and allergens than skin on most other parts of your body.”<sup>9</sup> For this reason, the red and  
 15 yellow color additives used by the Defendant in its Products are particularly hazardous to unsuspecting  
 16 customers applying the Products around the eye area, as directed by the Defendant’s marketing.

17 31. Numerous customer reviews concerning Defendant’s Products corroborate the  
 18 foregoing, indicating instances of staining, irritation, and discomfort following the use of the Products

19  
 20 <sup>4</sup> *Safety Data Sheet (SDS) D & C RED 6 Barium Lake LM*, Spectra Colors Corporation (Dec. 15, 2016),  
 21 [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_006LM0-SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_006LM0-SDS.pdf); *Safety Data Sheet (SDS) D & C RED 7*  
 22 *Ca LAKE ~52% Ba Free*, Spectra Colors Corporation (Apr. 24, 2015), [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_007LC0-SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_007LC0-SDS.pdf); *Safety Data Sheet (SDS) D & C RED 21 ALUM LAKE MS*, Spectra  
 23 Colors Corporation (Dec. 15, 2016), [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_021LM0-SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_021LM0-SDS.pdf);  
 24 *Safety Data Sheet (SDS) D & C RED 27 AL LAKE MS*, Spectra Colors Corporation (Dec. 15, 2016),  
 25 [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_027LM0-SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_027LM0-SDS.pdf); *Safety Data Sheet (SDS) D & C RED*  
 26 *28*, Spectra Colors Corporation (Apr. 23, 2015), [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_028000-](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_028000-SDS.pdf)  
 27 [SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_028000-SDS.pdf); *Safety Data Sheet (SDS) D & C RED 33*, Spectra Colors Corporation (Apr. 23, 2015),  
 28 [https://spectracolors.com/wp-content/uploads/2017/04/4.FD\\_033000-SDS.pdf](https://spectracolors.com/wp-content/uploads/2017/04/4.FD_033000-SDS.pdf) (collectively, “SDS, Red Dyes”).

<sup>5</sup> SDS, Red Dyes, *supra* note 2.

<sup>6</sup> A.A Newton, *Is Your Eye Makeup Actually ‘Eye-Safe’?*, Self.com (Nov. 6, 2019), <https://www.self.com/story/eye-safe-makeup>.

<sup>7</sup> *FD&C Yellow 6 Food Dye Safety Data Sheet (SDS)*, Flinn Scientific (Mar. 25, 2014), [https://www.flinnsci.com/sds\\_843.3-fdc-yellow-6-food-dye/sds\\_843.3/](https://www.flinnsci.com/sds_843.3-fdc-yellow-6-food-dye/sds_843.3/).

<sup>8</sup> *Safety Data Sheet Dandc Yellow No. 10*, Spectrum (2019), [https://www.spectrumchemical.com/media/sds/DC200\\_AGHS.pdf](https://www.spectrumchemical.com/media/sds/DC200_AGHS.pdf).

<sup>9</sup> Newton, *supra* note 4.

1 in question. For example, the following review was posted on Ulta.com for The Candy Shop  
2 Eyeshadow Palette:<sup>10</sup>

3 ★★★★★ great colors

makaykay  
1 year ago  
California

4 I had an allergic reaction to it but it was such a pretty palette

6 ★★★★★ okay

Cnbarlow  
6 months ago  
AI

7 the neons are bright that's about the only thing. I used 3 of the pinks today and they stained the skin  
8 and after wearing a while it started to irritate my eyelids so I tried removing. It took a cleansing balm,  
9 face wash, and micellar water to get most of it off. You can still see some of the bright pink I had on the  
10 outer corner of my eye.

11 32. In addition, the following review was posted on the Juvia's Place web page for The  
12 Wahala Eyeshadow Palette:<sup>11</sup>

13 ★☆☆☆☆

14 No pigment

15 Anonymous

3 years ago

16 I bought this pallet because I heard paid influencers talk about it. It is trash. Hate it. Irritated my eyes. Why I tried to return the item because of the  
17 poor quality they said nope!! And told me to wear some moisturizer before applying. Hate it.

18 Helpful?  (0)  (1) Report

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28 <sup>10</sup> <https://www.ulta.com/p/candy-shop-eyeshadow-palette-pimprod2037023>

<sup>11</sup> <https://www.juviasplace.com/products/wahala-palette-eyeshadow-palette>

1 33. The following reviews were posted on the Juvia's Place webpage for The Zulu:<sup>12</sup>

2 ★★★★★

3 The Zulu

4 Aaliyah

5 3 years ago

6 all shades had great pigment except for the yellow. The shades orange, pink, and purple did stain my eyes after only using them once, but other than those all the other shades were great :)

7 Helpful?  (0)  (0) Report

8 ★★★★★

9 Disappointed

10 Nubia

11 3 years ago

12 I bought this palette cause I already had the nubian and it's my favorite palette ever, but this one was COMPLETELY DIFFERENT from the nubian. It smells like chemicals so bad and has no pigment, very hard to blend and stains the skin. I tried to contact them to try to solve the problem but they never answered after I informed what they needed. Regretted.

13 Helpful?  (0)  (0) Report

14 34. The following review was posted on Amazon.com webpage for the Olori 1  
15 eyeshadow:<sup>13</sup>

16  Muff

17 ★☆☆☆☆ **Shades 1 and 4 are not for immediate eye area**

18 Reviewed in the United States on September 28, 2023

19 **Verified Purchase**

20 This was a let down because 2 shades out of the 6 shade palette was not for the immediate eye area. Even worse the palette tells you shades 1 and 4 but there are no shade names or indicator that I can see to confirm which shades are definitively 1 and 4. Pretty colors but I was disappointed by 1/3 of the palette not being meant to be used near the eyes.

21  
22 35. The following review was posted on the Ulta.com webpage for The Culture  
23 eyeshadow palette:<sup>14</sup>

24  
25  
26 <sup>12</sup> <https://www.juviasplace.com/products/the-zulu-eye-shadow-palette>

27 <sup>13</sup> [https://www.amazon.ac/product-reviews/B0BD7BYMJ7/ref=acr\\_dp\\_hist\\_1?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews#reviews-filter-bar](https://www.amazon.ac/product-reviews/B0BD7BYMJ7/ref=acr_dp_hist_1?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews#reviews-filter-bar)

28 <sup>14</sup> <https://www.ulta.com/p/culture-eyeshadow-palette-pimprod2031390>

1 **★★★★☆ Pretty but not for me :(**

Cassie  
1 year ago  
Bellevue, OH

2  
3 I thought the purples were so pretty! Unfortunately I had some sort of allergic reaction to it and cannot  
4 wear it. My eyes got swollen, puffy, red, and watery the next day. And it's happened twice now so I am  
5 done wearing it :(

6 36. The following reviews were posted on the Ulta.com webpage for The Sweet Pinks  
7 eyeshadow palette:<sup>15</sup>

8  
9 **☆☆☆☆ None of these are eye-safe.**

BkGirl  
4 months ago  
New York city

10 I felt a little tingly itch on my eyelid immediately. Why are categorizing this makeup as "eyeshadow" if  
11 it's not safe to use in the eye area?

12  
13 **☆☆☆☆ Entire palette is not suitable for immediate eye area.**

No way  
3 years ago  
undisclosed

14  
15 If I could give zero stars I would. If I knew this was not eye safe I would of never bought it. The web site  
16 did not state the warning . I will not trust a company that will not respect it's customers.

 Verified Reviewer

17 **☆☆☆☆ Do NOT use if you have sensitive eyes!!**

Kim  
3 years ago  
Sacramento, CA

18  
19 I wanted to do a cute pink look today so I went and bought this eye shadow palette. Used it as soon as I  
20 got home and 30 min later my eyes started stinging and watering. After checking the packaging, the  
21 back says that all shades are unsafe to be near the immediate eye area. I wouldn't recommend this for  
22 anyone with sensitive skin. My eyes still hurt hours after washing the product off.

23 **★★★★☆ VERY pigmented**

Milspse28  
3 years ago  
undisclosed

24 I love the colors, low fall out, very pigmented to the point that the matte colors stain the skin slightly.  
25 Used 3 makeup removers back to back and could not get it off completely. Hence the 3 stars

 Verified Reviewer

26 **★★★★☆ misleading**

.  
3 years ago  
.

27 it literally says to not use this product on near/around the eyes.... very misleading! should not advertise  
28 as eye shadow

<sup>15</sup> <https://www.ulta.com/p/sweet-pinks-eyeshadow-palette-pimprod2018814>



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★☆☆☆☆ Not for Sensitive Eyes

Ella  
3 years ago  
Cali

My initial look came out pretty, but my right eye was soon irritated, followed by my left a few hours later. I had to take it off. It's unfortunate because it is such a pretty color story.

37. These reviews are consistent with Plaintiffs’ experiences. As referenced above, upon application and use of the Products, Plaintiffs Salmon and Suarez both experienced color staining around their eyes. Moreover, upon application and use of the Masquerade Mini eyeshadow palette, Plaintiff Nyberg experienced itching and swelling on her eyelids, as well as teary eyes.

38. Lastly, although the risks of using the challenged color additives can be demonstrated independently by way of the foregoing facts, it is worth noting that the FDA has also reviewed, researched, and carefully considered<sup>16</sup> the safety of these color additives around the eye and has deliberately decided to not approve them for that use, rendering them unsafe for that purpose. California law has followed course with the Sherman Food, Drug, and Cosmetic Law. This is further outlined below in Sections IV-V.

**IV. Defendant’s Conduct Violates California’s Laws on Color Additives In Cosmetics**

39. California’s Sherman Food, Drug, and Cosmetic Law (the “Sherman Law”), codified as California Health and Safety Code §§ 109875 to 111929.4, governs the formulation, marketing, labeling, and sale of food, drugs, and cosmetics, including the use of color additives in cosmetics. California Health and Safety Code §§ 111660 to 111820 specifically cover cosmetics.

40. Of note, under California Health and Safety Code § 111730 “[a]ny cosmetic is misbranded if its labeling is false or misleading in any particular.” Here, the labeling, marketing, and advertising of the Products are false and misleading because they represent that the Products are eyeshadows that are all safe and intended for use around the eye, when that is not true for all the color

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<sup>16</sup> See <https://www.fda.gov/consumers/consumer-updates/how-safe-are-color-additives> (“In the approval process, the FDA evaluates safety data to ensure that a color additive is safe for its intended purposes.”).

1 palettes in each Product. As such, the Products are misbranded and violate California Health and  
2 Safety Code § 111730.<sup>17</sup>

3 41. Moreover, under California Health & Safety Code § 111665, “[a]ny color additive  
4 shall be considered *unsafe* for use with respect to any cosmetic unless there is in effect a regulation  
5 adopted pursuant to Section 110090 that prescribes its use in cosmetics.” (emphasis added).<sup>18</sup>

6 42. California Health and Safety Code § 110090 in turn states that “[a]ll color additive  
7 regulations and any amendments to the regulations adopted pursuant to the federal act, in effect on  
8 November 23, 1970, or adopted on or after that date, are the color additive regulations of this state.”  
9 Thus, California law has adopted all FDA regulations on color additives in cosmetics and has imposed  
10 parallel requirements for cosmetics under separate state law.

11 43. The FDA strictly regulates color additives in cosmetics. *See* 21 U.S.C. § 379e.  
12 Specifically, federal law prohibits the use of color additives in cosmetics – deeming them unsafe –  
13 *unless the color additives are approved specifically for the intended use.*<sup>19</sup> *See* 21 U.S.C. §  
14 379e(a)(1)(A) (“A color additive shall, with respect to any particular use (for which it is being used or  
15 intended to be used or is represented as suitable) in or on food or drugs or devices or cosmetics, be *deemed*  
16 *unsafe* for the purposes of the application of section 342(c), 351(a)(4), or 361(e) of this title, as the case  
17 may be, unless . . . there is in effect, and such additive and such use are in conformity with, a regulation  
18 issued under subsection (b) of this section listing such additive for such use, including any provision of  
19 such regulation prescribing the conditions under which such additive may be *safely* used.”) (emphasis  
20 added).

21 44. 21 U.S.C. § 379e(b)(2)(B) in turn states that the FDA’s regulations “may list such additive  
22 only for any more limited use or uses for which it is suitable and may *safely* be employed.” (emphasis  
23 added).

24 \_\_\_\_\_  
25 <sup>17</sup> Similarly, under N.Y. Educ. Law § 6818(2)(a), “A cosmetic shall be deemed to be misbranded. . . If its labeling is  
false or misleading in any particular.” As such, the Products are misbranded and violate New York state law as well.

26 <sup>18</sup> Similarly, under California Health & Safety Code § 111755, “[a] cosmetic is *misbranded* if it is a color additive, unless  
its packaging and labeling are in conformity with the packaging and labeling requirements applicable to color additives  
27 prescribed under the provisions of Section 110090. . . .” (emphasis added). Additionally, pursuant to California Health and  
Safety Code § 111695, “[a]ny cosmetic is *adulterated* if it is not a hair dye and it is, or it bears or contains, a color additive  
28 that is unsafe within the meaning of Section 111665.” (emphasis added).

<sup>19</sup> *Id.*

1 45. As a general matter, the colors permitted for use in cosmetics are listed and regulated  
2 under Parts 73-74, Subpart C of the FDA regulation, 21 C.F.R. §§ 73.2030 - §73.2995, 74.2052 –  
3 74.2711. However, pursuant to its vested authority to limit the use of certain colors, the FDA only  
4 permits certain color additives to be used in cosmetic products intended for use in the area of the  
5 eye.<sup>20</sup> For example, Blue No. 1 (§74.2101), Green No. 5 (§74.2205), Red No. 40 (§74.2340), and  
6 Yellow No. 5 (§74.2705) are color additives that may be “safely used” in “cosmetics intended for use  
7 in the area of the eye” as noted in their respective regulations.

8 46. In contrast, the following colors ***are not specifically permitted to be used in cosmetics***  
9 ***intended for use in the area of the eye***: Blue No. 4 (§74.2104), Brown No. 1 (§74.215), Green No.  
10 3 (§74.2203), Green No. 6 (§74.2206), Green No. 8 (§74.2208), Orange No. 4 (§74.2254), Orange  
11 No. 5 (§74.2255), Orange No. 10 (§74.2260), Orange No. 11 (§74.2261), Red No. 4 (§74.2304), Red  
12 No. 6 (§74.2306), Red No. 7 (§74.2307), Red No. 17 (§74.2317), Red No. 21 (§74.2321), Red No.  
13 22 (§74.2322), Red No. 27 (§74.2327), Red No. 28 (§74.2328), Red No. 30 (§74.2330), Red No. 31  
14 (§74.2331), Red No. 33 (§74.2333), Red No. 34 (§74.2334), Red No. 36 (§74.2336), Violet No. 2  
15 (§74.2602), Yellow No. 6 (§74.2706), Yellow No. 7 (§74.2707), Yellow No. 8 (§74.2708), Yellow  
16 No. 10 (§74.2710), and Yellow No. 11 (§74.2711).

17 47. Under 21 C.F.R. § 70.5(a), “[n]o listing or certification of a color additive shall be  
18 considered ***to authorize the use of any such color additive in any article intended for use in the area***  
19 ***of the eye unless such listing or certification of such color additive specifically provides for such***  
20 ***use.***” (emphasis added); *see also* FDA Color Additives Fact Sheet (“You may not use a color additive  
21 in the area of the eye unless the regulation for that additive specifically permits such use.” (citing 21  
22 C.F.R. § 70.5(a)). Because the regulations governing these colors do not specifically permit their use  
23 in cosmetics intended for use in the eye area, they are not authorized for such use and therefore may  
24 not be used in such cosmetic products. As such, any cosmetic product intended for use in the area of  
25 the eye and which contains any such color additives, is considered unsafe, misbranded, and  
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27 <sup>20</sup> The FDA expressly defines the term “area of the eye” as “the area enclosed within the circumference of the supra-  
28 orbital ridge and the infra-orbital ridge, including the eyebrow, the skin below the eyebrow, the eyelids and the eyelashes,  
and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital  
ridge.” 21 C.F.R. § 70.3(s).

1 adulterated under federal law, and therefore adulterated, unsafe, and misbranded under the Sherman  
2 Act, which specifically and independently adopts all color additive regulations of the FDCA. *See*  
3 California Health and Safety Code § 110090.

4 48. The Products violate the Sherman Law<sup>21</sup> because they are cosmetics intended for use  
5 around the eye and they contain color additives that are prohibited for use on or around the eye under  
6 California Health and Safety Code § 110090. As such, the Products are unsafe, misbranded, and  
7 adulterated under California Health & Safety Code §§ 111665, 111755, and 111695.

8  
9 **V. Consumers Have Been Financially Injured As a Direct Result of Defendant's**  
10 **Representations and Omissions**

11 49. As outlined herein, Defendant has made material misrepresentations and omissions  
12 regarding the Products. Reasonable consumers purchasing the Products would find it material to their  
13 purchasing decisions whether an eyeshadow contains unsafe and unfit color additives that could stain  
14 or irritate the eye, and whether those color additives have been legally approved for use around the  
15 eye.

16 50. Defendant knows or should have known that these representations and omissions are  
17 false and misleading. Moreover, Defendant knows or should have known that consumers would  
18 detrimentally rely on its representations and omissions in purchasing the Products.

19 51. As a direct result of Defendant's deceptive marketing practices, consumers, including  
20 Plaintiffs and members of the proposed Classes, have suffered financial harm in the form of a price  
21 premium paid for the Products; i.e., consumers would not have purchased the Products, or would have  
22 paid significantly less for them, had they known that they contained color additives that are unsafe,  
23 unfit, and unapproved for use around the eye.

24 **CLASS ACTION ALLEGATIONS**

25 52. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23 and all other applicable  
26 laws and rules, individually, and on behalf of all members of the following Classes:

27 \_\_\_\_\_  
28 <sup>21</sup> To be clear, Plaintiffs do not allege a violation of the FDCA as a basis for their claims, nor do they seek to enforce the  
FDCA by way of this action. Rather, Plaintiffs allege that Defendant's advertising, omissions, and sale of the Products  
violate California's Sherman Law.

1        **Nationwide Class**

2        All residents of the U.S. who purchased any of the Products within the applicable statute of  
3        limitation (“Nationwide Class”).

4        **California Class**

5        All residents of California who purchased any of the Products within the applicable statute  
6        of limitation (“California Class”).

7        **New York Class**

8        All residents of New York who purchased any of the Products within the applicable statute  
9        of limitation (“New York Class”) (together with the Nationwide Class, and the California  
10        Class, the “Classes”).

11        53.        Excluded from the Classes are the following individuals and/or entities: Defendant and  
12        its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity  
13        in which Defendant has a controlling interest; all individuals who make a timely election to be  
14        excluded from this proceeding using the correct protocol for opting out; and all judges assigned to  
15        hear any aspect of this litigation, as well as their immediate family members.

16        54.        Plaintiffs reserve the right to modify or amend the definition of the proposed Classes  
17        before the Court determines whether class certification is appropriate.

18        55.        **Numerosity:** Members of each Class are so numerous and geographically dispersed  
19        that individual joinder of all Class members is impracticable. The precise number of Class members  
20        is unknown to Plaintiffs but is likely to be ascertained by Defendant’s records. At a minimum, there  
21        likely are at least thousands of Class members.

22        56.        **Commonality:** There are questions of law and fact common to the proposed class(es).  
23        Common questions of law and fact include, without limitations:

- 24                a. whether Defendant’s course of conduct alleged herein violates the statutes,  
25                regulations, and other laws that are pled in this Complaint;
- 26                b. whether reasonable consumers would rely on the advertising and omissions  
27                regarding the Products and reasonably believe the Products are safe, fit, and  
28                intended for use around the eye area;
- c. whether Defendant knew or reasonably should have known that the lack of  
disclosures would lead reasonable customers to believe that the Products were safe,  
fit, and intended for use around the eye area;

- d. whether Defendant was unjustly enriched by retaining monies from the sale of the Products;
- e. whether certification of each Class is appropriate under Rule 23;
- f. whether Plaintiffs and the members of each Class are entitled to declaratory, equitable, and/or other relief, and the scope of such relief; and
- g. the amount and nature of the relief to be awarded to the Plaintiffs and the Classes.

57. **Typicality:** Plaintiffs' claims are typical of the other Class members because Plaintiffs, as well as Class members, purchased the Products and relied on the same representations and omissions regarding the Products. Plaintiffs and the members of each Class paid for Defendant's Products and would not have purchased them, or would have paid substantially less for them, had they known that the Products contained color additives that are unsafe, unfit, and unapproved for use around the eye.

58. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the proposed Classes as their interests do not conflict with the interests of the members of the proposed Classes they seek to represent, and they have retained counsel competent and experienced in class action litigation. Thus, the interests of the members of the Classes will be fairly and adequately protected by Plaintiffs and their counsel.

59. **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law and fact identified in this Complaint predominate over any other questions affecting only individual members of the Classes.

60. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this litigation because individual litigation of each claim is impractical. It would be unduly burdensome to have individual litigation of thousands of individual claims in separate lawsuits, every one of which would present the issues presented in the Complaint/lawsuit. Further, because of the damages suffered by any individual Class member may be relatively modest in relation to the cost of litigation, the expense and burden of individual litigation make it difficult, if not impossible. Furthermore, many of the Class members may be unaware that claims exist against Defendant.

**FIRST CLAIM FOR RELIEF**

**Violation of California’s Consumers Legal Remedies Act (“CLRA”)**

**California Civil Code § 1750, *et seq.***

***(For the California Class)***

***(For Injunctive Relief Only)***

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61. Plaintiffs Suarez and Nyberg repeat the allegations contained in paragraphs 1-60 above as if fully set forth herein.

62. Plaintiffs Suarez and Nyberg bring this claim individually and on behalf of the members of the proposed California Class against Defendant pursuant to California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

63. The Products are “good[s]” within the meaning of Cal. Civ. Code § 1761(a), and the purchases of the Products by Plaintiffs Suarez and Nyberg and members of the California Class constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

64. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have . . . .” By advertising the Products as eyeshadows that can be used on the area of the eye, Defendant has represented and continues to represent that the Products have characteristics and uses (i.e., that all color palettes in the Products can be used safely around the eye) that they do not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

65. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” By advertising the Products as eyeshadows that can be used on the area of the eye, Defendant has represented and continues to represent that the Products are of a particular standard, quality, or grade (i.e., that all color palettes in the Products can be used safely around the eye) that they do not actually meet. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

66. Moreover, Defendant has violated the CLRA by failing to adequately disclose that the Products contain unsafe, unfit, and unapproved color additives, or that certain palettes should not be used around the eye.



1           67.     At all relevant times, Defendant has known or reasonably should have known that the  
2 challenged representations and omissions are false and deceptive, and that Plaintiffs Suarez and  
3 Nyberg and other members of the California Class would reasonably and justifiably rely on these  
4 representations and omissions when purchasing the Products, and reasonably and justifiably believe  
5 that all the color additives in the Products are safe, fit, and approved for use around the eye.  
6 Nonetheless, Defendant deceptively advertises the Products as such to deceive consumers into  
7 purchasing its Products.

8           68.     Plaintiffs Suarez and Nyberg and members of the California Class have reasonably  
9 relied on Defendant's misleading representations and omissions when purchasing the Products and  
10 reasonably believed that all the color additives in the Products were safe, fit, and approved for use  
11 around the eye. Moreover, based on the materiality of Defendant's misleading and deceptive conduct,  
12 reliance may be presumed or inferred for Plaintiffs Suarez and Nyberg and members of California  
13 Class.

14           69.     Plaintiffs Suarez and Nyberg and members of the California Class have suffered and  
15 continue to suffer injuries caused by Defendant because they would have paid significantly less for  
16 the Products, or would not have purchased them at all, had they known the truth about them.

17           70.     Under Cal. Civ. Code § 1782, on April 4, 2024, Plaintiffs Suarez and Nyberg, through  
18 their undersigned counsel, sent Defendant a notice letter through certified mail, notifying Defendant  
19 of its violations under the CLRA (as well as other statutes and laws). Because the 30-day cure period  
20 has not yet elapsed under the CLRA, Plaintiffs Suarez and Nyberg currently only seek injunctive  
21 relief under the CLRA. If the 30-day period elapses and Defendant has not yet cured its conduct under  
22 the CLRA, Plaintiffs Suarez and Nyberg intend on amending this Complaint to also seek damages  
23 under the CLRA.

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**SECOND CLAIM FOR RELIEF**  
**Violation of California’s False Advertising Law (“FAL”)**  
**California Business & Professions Code § 17500, *et seq.***  
***(For the California Class)***

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4       71.     Plaintiffs Suarez and Nyberg repeat the allegations contained in paragraphs 1-60 above  
5 as if fully set forth herein.

6       72.     Plaintiffs Suarez and Nyberg bring this claim individually and on behalf of the  
7 members of the proposed California Class against Defendant.

8       73.     The FAL makes it “unlawful for any person to make or disseminate or cause to be  
9 made or disseminated before the public . . . in any advertising device . . . or in any other manner or  
10 means whatever, including over the Internet, any statement, concerning . . . personal property or  
11 services professional or otherwise, or performance or disposition thereof, which is untrue or  
12 misleading and which is known, or which by the exercise of reasonable care should be known, to be  
13 untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

14       74.     Defendant has represented and continues to represent to the public, including Plaintiffs  
15 Suarez and Nyberg and members of the proposed California Class, through its deceptive  
16 representations and omissions, that the Products, including all their color additives, are safe and fit  
17 for use as eyeshadows around the eye area. However, this is false and misleading because the Products  
18 contain color additives that are unsafe, unfit, and unapproved for use around the eye. Because  
19 Defendant has disseminated false and misleading information and omissions regarding the Products,  
20 and Defendant knows, knew, or should have known through the exercise of reasonable care that the  
21 representations and omissions were and continue to be false and misleading, Defendant has violated  
22 the FAL.

23       75.     As a result of Defendant’s false advertising, Defendant has and continues to  
24 unlawfully obtain money from Plaintiffs Suarez and Nyberg and members of the California Class.  
25 Plaintiffs Suarez and Nyberg therefore request that the Court cause Defendant to restore this  
26 fraudulently obtained money to them and members of the proposed California Class, to disgorge the  
27 profits Defendant made on these transactions, and to enjoin Defendant from violating the FAL or  
28 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiffs Suarez and

1 Nyberg and members of the proposed California Class may be irreparably harmed and/or denied an  
2 effective and complete remedy.

3  
4 **THIRD CLAIM FOR RELIEF**

5 **Violation of California’s Unfair Competition Law (“UCL”),**  
6 **California Business & Professions Code § 17200, *et seq.***  
7 **(For the California Class)**

8 76. Plaintiffs Suarez and Nyberg repeat the allegations continued in paragraphs 1-60  
9 above as if fully set forth herein.

10 77. Plaintiffs Suarez and Nyberg bring this claim individually and on behalf of the  
11 members of the proposed California Class against Defendant.

12 78. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that “unfair  
13 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,  
14 deceptive, untrue or misleading advertising . . . .”

15 79. Under the UCL, a business act or practice is “unlawful” if it violates any established  
16 state or federal law or regulation. Defendant’s false and misleading advertising of the Products was  
17 and continues to be “unlawful” because it violates the Sherman Law, as set forth herein, as well as  
18 the CLRA, the FAL. As a result of Defendant’s unlawful business acts and practices, Defendant has  
19 unlawfully obtained money from Plaintiffs Suarez and Nyberg and members of the proposed  
20 California Class.

21 80. Under the UCL, a business act or practice is “unfair” if its conduct is substantially  
22 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and  
23 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of  
24 the harm to the alleged victims. Defendant’s conduct was and continues to be of no benefit to  
25 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who  
26 rely on the labeling and advertising of the Products. Deceiving consumers into believing that the  
27 Products are “eyeshadow” palettes that can safely be used around the eye and contain only ingredients  
28 that are safe, fit and approved for use in the eye area, when in fact certain color additives in the  
Products are unsafe, unfit, and unapproved for use around the eye, substantially injures consumers,

1 offends public policy and is immoral, unethical, oppressive, and unscrupulous. Therefore,  
2 Defendant's conduct was and continues to be "unfair." As a result of Defendant's unfair business acts  
3 and practices, Defendant has and continues to unfairly obtain money from Plaintiffs Suarez and  
4 Nyberg and members of the proposed California Class.

5 81. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or is  
6 likely to deceive members of the consuming public. Defendant's conduct here was and continues to  
7 be fraudulent because it has the effect of deceiving consumers into believing the Products, including  
8 all their color additives, are safe, fit, and approved for use around the eye. Because Defendant misled  
9 Plaintiffs Suarez and Nyberg and members of the California Class, Defendant's conduct was  
10 "fraudulent." As a result of Defendant's fraudulent business acts and practices, Defendant has and  
11 continues to fraudulently obtain money from Plaintiffs Suarez and Nyberg and members of the  
12 California Class.

13 82. Plaintiffs Suarez and Nyberg request that the Court cause Defendant to restore this  
14 unlawfully, unfairly, and fraudulently obtained money to them, and members of the proposed  
15 California Class, to disgorge the profits Defendant made on these transactions, and to enjoin  
16 Defendant from violating the UCL or violating it in the same fashion in the future as discussed herein.  
17 Otherwise, Plaintiffs Suarez and Nyberg and members of the proposed California Class may be  
18 irreparably harmed and/or denied an effective and complete remedy.

19 **FOURTH CLAIM FOR RELIEF**

20 **Breach of Express Warranty**

21 **Cal. Com. Code § 2313; N.Y. U.C.C. Law § 2-313**

22 ***(For the California Class and New York)***

23 83. Plaintiffs repeat the allegations contained in paragraphs 1-60 above as if fully set forth  
24 herein.

25 84. Plaintiffs Suarez and Nyberg bring this claim individually and on behalf of the  
26 members of the California Class against Defendant. Plaintiff Salmon brings this claim individually  
27 and on behalf of members of the New York Class against Defendant.

28 85. Both California's and New York's express warranty statutes provide that "(a) [a]ny  
affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes

1 part of the basis of the bargain creates an express warranty that the goods shall conform to the  
2 affirmation or promise,” and “(b) [a]ny description of the goods which is made part of the basis of  
3 the bargain creates an express warranty that the goods shall conform to the description.” Cal. Com.  
4 Code § 2313; N.Y. U.C.C. Law § 2-313(1).

5 86. As outlined herein, Defendant has expressly warranted that the Products are  
6 eyeshadows to be used around the eye area. However, as alleged herein, these express representations  
7 are false and misleading as the Products contain color additives that are unsafe, unfit, and unapproved  
8 for use around the eye.

9 87. Defendant’s representations are: (a) affirmations of fact or promises made by  
10 Defendant to consumers that the Products, including all their color additives, are safe and fit for use  
11 around the eye area; (b) became part of the basis of the bargain to purchase the Products when  
12 Plaintiffs and other consumers relied on the representations; and (c) created an express warranty that  
13 the Products would conform to the affirmations of fact or promises. In the alternative, the  
14 representations about the Products are descriptions of goods which were made as part of the basis of  
15 the bargain to purchase the Products, and which created an express warranty that the Products would  
16 conform to the product descriptions.

17 88. Plaintiffs and members of the California Class and New York Class reasonably and  
18 justifiably relied on the foregoing express warranties, believing that the Products did in fact conform  
19 to those warranties.

20 89. Defendant has breached the express warranties made to Plaintiffs and members of the  
21 California Class and New York Class by failing to provide the Products as promised.

22 90. Plaintiffs and members of the California Class and New York Class paid a premium  
23 price for the Products but did not obtain the full value of the Products as represented. If Plaintiffs and  
24 members of the California Class and New York Class had known of the true nature of the Products,  
25 they would not have purchased the Products or would not have been willing to pay the premium price  
26 associated with them. As a result, Plaintiffs and members of the California Class and New York Class  
27 suffered injury and deserve to recover all damages afforded under the law.  
28

1 91. On December 5, 2023, Plaintiff Salmon, through her undersigned counsel, notified  
2 Defendant of its breach of express warranty by way of a notice letter outlining the foregoing  
3 allegations. On April 4, 2024, Plaintiffs Suarez and Nyberg, through their undersigned counsel,  
4 notified Defendant of its breach of express warranty by way of a notice letter outlining the foregoing  
5 allegations.

6 **FIFTH CLAIM FOR RELIEF**  
7 **Breach of Implied Warranty**  
8 **Cal. Com. Code § 2313; N.Y. U.C.C. Law § 2-314(2)(c)**  
9 ***(For the California Class and New York Class)***

10 92. Plaintiffs repeat the allegations contained in paragraphs 1-60 above as if fully set forth  
11 herein.

12 93. Plaintiffs Suarez and Nyberg bring this claim individually and on behalf of the  
13 members of the California Class against Defendant. Plaintiff Salmon brings this claim individually  
14 and on behalf of members of the New York Class who purchased any of the Products directly on the  
15 Juvia's Place website, against Defendant.

16 94. Both California's and New York's implied warranty of merchantability statutes  
17 provide that "a warranty that the goods shall be merchantable is implied in a contract for their sale if  
18 the seller is a merchant with respect to goods of that kind." Cal. Com. Code § 2314(1); N.Y. U.C.C.  
19 Law § 2-314(1).

20 95. California's and New York's implied warranty of merchantability statutes also provide  
21 that "[g]oods to be merchantable must be at least such as . . . (c) are fit for the ordinary purposes for  
22 which such goods are used." Cal. Com. Code § 2314(2)(c); N.Y. U.C.C. § 2-314(2)(c).

23 96. Defendant is a merchant with respect to the sale of the Products. Therefore, a warranty  
24 of merchantability is implied in every contract for sale of the Products to California and New York  
25 consumers.

26 97. Defendant's Products are not merchantable because they are not "fit for the ordinary  
27 purposes for which such goods are used." This is because the Products contain color additives which are  
28 unsafe, unfit, and unapproved for use around the eye, rendering the Products unfit for use as eyeshadows  
for use around the eye.

1 98. Plaintiffs, as well as other California and New York consumers, did not receive the  
2 goods as impliedly warranted by Defendant to be merchantable. Therefore, the Products are not  
3 merchantable under California and New York law and Defendant has breached its implied warranty  
4 of merchantability in regard to the Products.

5 99. If Plaintiffs and members of the California Class and New York Class had known that  
6 Products were unfit for use as eyeshadows, they would not have been willing to pay the premium  
7 price associated with them. Therefore, as a direct and/or indirect result of Defendant's breach,  
8 Plaintiffs and members of the California Class and New York Class have suffered injury and deserve  
9 to recover all damages afforded under the law.

10 100. On December 5, 2023, Plaintiff Salmon, through her undersigned counsel, notified  
11 Defendant of its breach of implied warranty by way of a notice letter outlining the foregoing  
12 allegations. On April 4, 2024, Plaintiffs Suarez and Nyberg, through their undersigned counsel,  
13 notified Defendant of its breach of implied warranty by way of a notice letter outlining the foregoing  
14 allegations.

15 **SIXTH CLAIM FOR RELIEF**  
16 **Violation of New York's General Business Law § 349**  
17 ***(For the New York Class)***

18 101. Plaintiff Salmon repeats the allegations contained in paragraphs 1-60 above as if fully  
19 set forth herein.

20 102. Plaintiff Salmon brings this claim individually and on behalf of the members of the  
21 proposed New York Class against Defendant.

22 103. New York General Business Law ("GBL") § 349 prohibits "[d]eceptive acts or  
23 practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this  
24 state."

25 104. The conduct of the Defendant alleged herein constitutes deceptive acts or practices in  
26 violation of GBL § 349, and as such, Plaintiff Salmon and the New York Class members seek  
27 monetary damages.

28 105. Specifically, Defendant falsely and deceptively advertises the Products as safe and  
suitable as eyeshadows to be used around the eye area when they contain color additives that are not



1 safe, fit, or approved for use around the eye. Moreover, Defendant has failed to adequately disclose  
2 that the Products contain unsafe, unfit, and unapproved color additives, or that certain color palettes  
3 should not be used around the eye.

4 106. This improper consumer-oriented conduct induced Plaintiff Salmon and the New York  
5 Class to purchase and pay a premium for the Products when they otherwise would not have paid the  
6 same price had they known the truth. Accordingly, Plaintiff Salmon and the New York Class received  
7 less than what they bargained and/or paid for.

8 107. As a result of Defendant's deceptive acts and practices, Plaintiff Salmon and the New  
9 York Class are entitled to monetary, compensatory, statutory, treble, and punitive damages, restitution  
10 and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and  
11 attorneys' fees and costs.

12  
13 **SEVENTH CLAIM FOR RELIEF**  
14 **Violation of New York's General Business Law § 350**  
15 ***(For the New York Class)***

16 108. Plaintiff Salmon repeats the allegations contained in paragraphs 1-60 above as if fully  
17 set forth herein.

18 109. Plaintiff Salmon brings this claim individually and on behalf of the members of the  
19 proposed New York Class against Defendant.

20 110. GBL § 350-a(1) provides, in part, as follows:

21 The term "false advertising" means advertising, including labeling, of  
22 a commodity, or of the kind, character, terms or conditions of any  
23 employment opportunity if such advertising is misleading in a material  
24 respect. In determining whether any advertising is misleading, there  
25 shall be taken into account (among other things) not only  
26 representations made by statement, word, design, device, sound or any  
27 combination thereof, but also the extent to which the advertising fails  
28 to reveal facts material in the light of such representations with respect  
to the commodity or employment to which the advertising relates under  
the conditions prescribed in said advertisement, or under such  
conditions as are customary or usual. ...

111. Defendant's marketing and advertising of the Products as eyeshadows that can be  
safely used around the eye area is materially misleading as outlined herein.

1 112. Moreover, Defendant's advertising fails to reveal the material fact that the Products  
2 contain unsafe, unfit, and unapproved color additives, or that certain color palettes should not be used  
3 around the eye.

4 113. Plaintiff Salmon and the New York Class relied on Defendant's misleading  
5 representations and omissions and reasonably believed the Products, including their color additives,  
6 were all safe, fit, and approved for use around the eye.

7 114. Defendant knowingly made material misrepresentations and failed to include adequate  
8 disclosures regarding the Products, as outlined herein, demonstrating willful, wanton, and reckless  
9 disregard for consumer safety.

10 115. As a result of Defendant's misleading deceptive acts and practices, Plaintiff Salmon  
11 and the New York Class are entitled to monetary, compensatory, statutory, treble, and punitive  
12 damages, as well as restitution and disgorgement of all profits obtained through Defendant's  
13 deceptive conduct, along with interest, attorneys' fees, and costs.

14  
15 **EIGHTH CLAIM FOR RELIEF**

16 **Quasi Contract/Unjust Enrichment/Restitution**

17 ***(for the Nationwide Class; alternatively, for the New York Class and California Class)***

18 116. Plaintiffs repeat the allegations contained in paragraphs 1-60 above as if fully set forth  
19 herein.

20 117. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
21 Nationwide Class against Defendant. Alternatively, Plaintiffs bring this claim individually and on  
22 behalf of the members of the proposed New York Class and California Class against Defendant.

23 118. As alleged herein, Defendant has made misleading representations and omissions  
24 regarding the Products to induce Plaintiffs and other consumers to purchase the Products. Plaintiffs  
25 and members of the Classes have reasonably relied on these misleading representations and omissions  
26 and have not received all of the benefits promised by Defendant. Plaintiffs and members of the  
27 proposed Classes have therefore been induced by Defendant's misleading and deceptive  
28 representations and omissions about the Products, and paid more money to Defendant for the Products  
than they otherwise would and/or should have paid.

1 119. Plaintiffs and members of the proposed Classes have conferred a benefit upon  
2 Defendant as Defendant has retained monies paid to it by Plaintiffs and members of the proposed  
3 Classes.

4 120. The monies received were obtained under circumstances that were at the expense of  
5 Plaintiffs and members of the proposed Classes—i.e., Plaintiffs and members of the proposed Classes  
6 did not receive the full value of the benefit conferred upon Defendant. Therefore, it is inequitable and  
7 unjust for Defendant to retain the profit, benefit, or compensation conferred upon it.

8 121. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and  
9 members of the proposed Classes are entitled to restitution, disgorgement, and/or the imposition of a  
10 constructive trust upon all profits, benefits, and other compensation obtained by Defendant from its  
11 false, misleading, and unlawful conduct as alleged herein.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs, individually and on behalf of the proposed Classes, respectfully  
14 pray for following relief:

15 A. Certification of this case as a class action on behalf of the proposed Classes defined  
16 above, appointment of Plaintiffs as Class representatives, and appointment of their counsel as Class  
17 Counsel;

18 B. A declaration that Defendant's actions, as described herein, violate the claims  
19 described herein;

20 C. An award to Plaintiffs and the proposed Classes of restitution and/or other equitable  
21 relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment  
22 that Defendant obtained from Plaintiffs and the proposed Classes as a result of its unlawful, unfair  
23 and fraudulent business practices described herein;

24 D. An award of all economic, monetary, actual, consequential, and compensatory  
25 damages caused by Defendant's conduct;

26 E. An award of nominal, punitive, and statutory damages;

27 F. An award to Plaintiffs and their counsel of reasonable expenses and attorneys' fees;

28

1 G. An award to Plaintiffs and their proposed Classes of pre and post-judgment interest,  
2 to the extent allowable; and

3 H. For such further relief that the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs, on behalf of themselves and the proposed Classes, hereby demand a jury trial with  
6 respect to all issues triable of right by jury.

7  
8 DATED: April 23, 2024

**TREEHOUSE LAW, LLP**

9 By: /s/ Benjamin Heikali

10 Benjamin Heikali (SBN 307466)  
11 Ruhandy Glezakos (SBN 307473)  
12 Joshua Nassir (SBN 318344)  
13 Nicole Babaknia (SBN 334526)  
14 2121 Avenue of the Stars, Suite 2580  
15 Los Angeles, CA 90067  
16 Telephone: (310) 751-5948  
17 bheikali@treeouselaw.com  
18 rglezakos@treeouselaw.com  
19 jnassir@treeouselaw.com  
20 nbabaknia@treeouselaw.com

21 *Attorneys for Plaintiffs and the*  
22 *Putative Classes*