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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KACEY WILSON, individually and on behalf
of all other persons similarly situated,

Plaintiff,

v.

COLOURPOP COSMETICS, LLC,

Defendant.

Case No.: 3:22cv-05198-TLT

**SECOND AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Kacey Wilson (“Plaintiff”) brings this Class Action against ColourPop Cosmetics,
2 LLC (“ColourPop” or “Defendant”), individually and on behalf of all others similarly situated.
3 The allegations herein are based on personal knowledge as to Plaintiff’s own conduct and are made
4 on information and belief as to all other matters based on an investigation by counsel.

5 **NATURE OF THE ACTION**

6 1. This is a civil class action concerning Defendant’s design, formulation,
7 manufacturing, marketing, advertising, distribution, and sale of eye makeup that contains color
8 additives and ingredients that are dangerous when used on the immediate eye area.

9 2. The products at issue include eyeshadow palettes (which Defendant sometimes
10 refers to and promotes as, inter alia, “shadow palettes,” “pigment palettes,” or “pressed powder
11 palettes”) and eyeliner products that are formulated with and/or contain certain color additives that
12 are not safe for use in the eye area (collectively, “ColourPop Eye Makeup” or “Products”).

13 3. Regardless of what ColourPop calls each ColourPop Eye Makeup Product, they are
14 misleadingly marketed and sold by Defendant as eyeshadow or eye makeup. Defendant’s
15 marketing, advertising, public statements, and social media posts and videos encourage and instruct
16 consumers to use the Products in the eye area, and the only reasonable and foreseeable use of the
17 Products is cosmetic application in the eye area. Thus, ColuorPop misrepresents the purpose of the
18 Products and misleads consumers that the Products are intended for use in the eye area when they
19 are unsafe and unfit for use in that manner. ColourPop’s practices in this regard are substantially
20 similar across all of the Products at issue.

21 4. The Products are inherently dangerous and unfit for use in the eye area because they
22 are formulated with and/or contain one or more of the following color additives: FD&C Red No. 4;
23 D&C Red No. 6, 7, 17, 21, 22, 27, 28, 30, 31, 33, 34, 36; D&C Violet No. 2; Ext. D&C Violet No.
24 2; FD&C Yellow No. 6; D&C Yellow No. 7, 8, 10, 11; Ext. D&C Yellow No. 7; D&C Orange No.
25 4, 5, 10, 11; D&C Green No. 6, 8; FD&C Green No. 3; D&C Brown No. 1; and/or D&C Blue No.
26 4 (the “Harmful Ingredients”).¹

27 ¹ Here, and throughout, the term “Products” shall refer to any item sold by Defendant for use in the
28 eye area that contains one or more Harmful Ingredients. The Products include, but are not limited
to, the following palette names: “In a Trance,” “Of Quartz,” “Coast to Coral,” “Fine Feathered,”

1 5. The Harmful Ingredients can cause physical injuries including eye pain, redness,
2 itching, skin irritation, rashes, and skin staining, and can cause damage through their toxicity when
3 they enter the body. For example, Red 7 has been known to cause “serious eye irritation.”² Red 27
4 is classified as acutely toxic if consumed orally, “causes eye irritation”³ and “may be cytotoxic,
5 mutagenic, and inhibit certain mitochondrial functions.”⁴ Red 28 is classified as acutely toxic if
6 consumed orally and “[c]auses serious eye irritation.”⁵ Yellow 6 is “hazardous in case of eye
7 contact (irritant)” and is acutely toxic when orally ingested.⁶ Yellow 10 is also acutely toxic when
8 ingested and associated with eye irritation.⁷

9 6. The presence of one or more Harmful Ingredients renders the Products unsafe and
10 unfit for use in the eye area (the “Defect”).

11 7. Defendant markets ColourPop Eye Makeup for a purpose (cosmetic application
12 around the eye area) for which such use is inherently dangerous. The Products cannot be used for
13 their principal intended purpose. The Products are thus worthless by virtue of the Defect.

14 8. Defendant has undertaken a deliberate and willful pattern of conduct (including
15 taking active measures) aimed at deceiving consumers, including Plaintiff, into believing that
16 ColourPop Eye Makeup is safe for its intended use: cosmetic application around the eye area.

17 9. At all relevant times, Defendant knew about the Defect, but nevertheless marketed,
18 advertised, and sold ColourPop Eye Makeup for use around the eyes without warning consumers of
19 the known dangers.

20 10. As a direct and proximate result of Defendant’s misleading conduct, concealment of
21 the Defect, and failure to adequately warn consumers about the presence of the Harmful

22
23 “Truly Madly Deeply,” “Pretty Guardian,” “Lilac You A Lot,” “Darth Vader,” “Ooh la la,”
24 “Strawberry Shake,” “Secret Admirer,” “Boudoir Noir,” and “Menage a Muah.”

25 ² https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.007LC0-SDS.pdf.

26 ³ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.027LM0-SDS.pdf.

27 ⁴ https://pubchem.ncbi.nlm.nih.gov/compound/D_-_C-Red-no.-27.

28 ⁵ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.028000-SDS.pdf.

⁶ <https://www.geneseo.edu/sites/default/files/users/247/Yellow%206.pdf>.

⁷ https://www.spectrumchemical.com/media/sds/DC200_AGHS.pdf.

1 Ingredients and the fact that the Products are not safe or fit for use in the eye area, Plaintiff and
2 other similarly situated consumers (“Class” or “Class Members”) purchased and/or used the
3 Products to their detriment.

4 11. Plaintiff and putative Class Members were unaware of the Defect at the time they
5 purchased the Products. Had Plaintiff and Class Members known that ColourPop Eye Makeup
6 contains a Defect rendering it unfit for its intended purpose – use in the eye area – they would not
7 have purchased the Products or would have paid substantially less for the Products.

8 12. Plaintiff and all putative Class Members purchased ColourPop Eye Makeup which
9 suffered from the same Defect at the point of sale, and poses substantially the same safety risk to
10 Plaintiff, putative Class Members, consumers, and the public.

11 13. All of the Products suffer from the same Defect and are similarly mislabeled and
12 falsely advertised because each of the Products is sold to be indistinguishable from eyeshadow or
13 eyeliner products yet is unfit for use in the eye area due to the presence of the Harmful Ingredients.

14 14. Plaintiff and each putative Class Member have been damaged and suffered an injury
15 in fact caused by Defendant’s false, fraudulent, unfair, deceptive, and misleading practices, as set
16 forth herein, and seek compensatory damages and injunctive relief.

17 **JURISDICTION AND VENUE**

18 15. This Court has jurisdiction over the subject matter of this action pursuant to 28
19 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive of interest
20 and costs, and is a class action in which at least one member of the Class is a citizen of a State
21 different from the Defendant.

22 16. This Court has personal jurisdiction over Defendant because Defendant maintains
23 its principal place of business within the State of California and is registered as a limited liability
24 company in the State of California. Furthermore, a substantial portion of the events giving rise to
25 Plaintiff’s claims occurred in this State, including Plaintiff’s purchase.

26 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a
27 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District,
28 because Defendant transacts business and/or has agents within this District, and because Defendant

1 maintains its principal place of business within the State of California and is registered as a limited
2 liability company in the State of California.

3 **PARTIES**

4 18. Plaintiff Kacey Wilson is a resident of San Francisco, California, who purchased
5 and used ColourPop Eye Makeup within the relevant time period. Specifically, Plaintiff Wilson
6 purchased and used ColourPop’s “Boudoir Noir” and “Menage a Muah” eyeshadow palettes, both
7 of which contain the Harmful Ingredients and thus suffer from the Defect. Upon discovering that
8 the “Boudoir Noir” and “Menage a Muah” eyeshadow palettes each contain one or more Harmful
9 Ingredient Plaintiff stopped using the Products and still has unused Products in her
10 possession. Because of the Defect, Plaintiff cannot use the remaining Products and, accordingly,
11 suffered economic loss.

12 19. ColourPop Cosmetics, LLC is registered as a limited liability company in the State
13 of California and has its principal place of business at 1451 Vanguard Drive, Oxnard, California
14 93033. ColourPop designs, formulates, manufactures, markets, advertises, distributes, and sells a
15 wide range of consumer cosmetic products including but not limited to, eyeshadow, eyeliner,
16 eyelid primer, and eyebrow pencils, nationwide, including in California.⁸ Defendant’s misleading
17 and unlawful marketing, advertising and product information concerning the Products was
18 conceived, reviewed, approved, and otherwise controlled from Defendant’s California
19 headquarters. Defendant’s misleading marketing concerning the Products was coordinated at,
20 emanated from, and was developed at its California headquarters. All critical decisions regarding
21 the misleading marketing and advertising of the Products were made in California.

22 **THE PRODUCTS**

23 20. ColourPop Eye Makeup is sold at retail locations throughout the United States,
24 including Ulta Beauty stores, and the Products are also available for purchase online at
25 www.colourpop.com and through third-party retailers’ websites.⁹
26

27 ⁸ See generally <https://colourpop.com>.

28 ⁹ See generally <https://www.ulta.com/brand/colourpop>.

1 21. The Products that are the subject of this lawsuit include eyeshadow palettes (which
2 Defendant sometimes refers to as, inter alia, “shadow palettes,” “pigment palettes,” or “pressed
3 powder palettes”), eyeliners (which Defendant sometimes refers to as “liners”), and other
4 categories of products that Defendant has promoted or advertised for use in the eye area during the
5 maximum time period allowed by law.

6 22. Defendant’s conduct was substantially similar with regard to the Products. The
7 Products, which are sold online by Defendant at www.Colourpop.com as well as by third-party
8 retailers, all: (1) are advertised and marketed by Defendant for cosmetic use on the eye area; (2) are
9 advertised, marketed, packaged, and sold to be indistinguishable from eyeshadow or eyeliner
10 products (3) are reasonably understood by consumers to be safe and suitable for use in the eye area;
11 (4) are in fact unfit, unsafe, and unsuitable for use in the eye area. Defendant invented terms for
12 the Products such as, inter alia, “shadow palettes,” “pigment palettes,” or “pressed powder
13 palettes,” but each of the Products is intended for use in the eye area.

14 23. In all cases for the Products, despite Defendant’s invented names, Defendant
15 intentionally and deceptively designed the Products to be indistinguishable from products that are
16 *exclusively* for use in the eye area, and did indeed market the Products for use in the eye area.

17 ***Defendant’s Eyeshadow Palettes***

18 24. There are currently over 100 different variations of ColourPop Eyeshadow Palettes
19 available for purchase at www.colourpop.com/collections/shadow-palette, many of which are
20 formulated with and contain color additives that are unfit for use in the eye area due to the presence
21 of the Harmful Ingredients .

22 25. The price of ColourPop Eyeshadow Palettes can range from around \$10.00 to
23 \$39.00, and each product contains between 4-35 distinct colors or shades (“Color Pans”) which
24 ColourPop often refers to as “pressed powders.”

25 26. But regardless of what ColourPop calls each eyeshadow palette Product, they are
26 intentionally marketed and sold to be indistinguishable from eyeshadow or eye makeup, their only
27 reasonable and foreseeable use by consumers is cosmetic application in the eye area, and
28 Defendant’s promotional images, tutorials, and other advertising materials instruct and encourage

1 that said Products be used for cosmetic application in the eye area. ColourPop’s practices in this
2 regard are substantially similar across all of the Products at issue. This is the crux of Defendant’s
3 misleading conduct: Defendant sells Products that should not and cannot be used in the eye area,
4 yet markets the Products such that their sole reasonable and foreseeable use by consumers is
5 cosmetic application in the eye area.

6 27. ColourPop also markets, sells, advertises, and promotes other Eye Makeup Products
7 containing the Harmful Ingredients for use on and around the eye area.

8 28. For example, the ColourPop’s Colour Me Obsessed! crème gel liner vault (an
9 eyeliner) webpage depicts a model using the product in the shades “Good Reef” (pink) and
10 “Catsuit” (teal) in the eye area even though those shades contain Harmful Ingredients.¹⁰



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¹⁰ Specifically, “Good Reef” contains the Harmful Ingredients Red 6 (CI 15850) and Yellow 10 (CI 47005) and “Catsuit” contains the Harmful Ingredient Yellow 10 (CI 47005).



@raincornelius

29. The webpage for the Colour Me Obsessed! eyeliner further states “Our super pigmented BFF Crème Gel Liner gives your eyes the prettiest pop of colour.” (see Figure 3), and the Product on the website is found under “Makeup / Eyes / Eye Sets.”¹¹ Defendant proceeds to explain the Product allows for “comfortable application in the waterline,” an area that comes in direct contact with the eye.

Makeup / Eyes / Eye Sets

colour me obsessed!
 crème gel liner vault

\$38
 \$84 full value

4 interest-free payments of \$9.50 with Klarna. [Learn More](#)

- 1 +

add to bag

♥ add to wishlist

We're so obsessed...

Get 12 fan-fave shades in this exclusive colourful BFF Crème Gel Liner Kit with the latest faux-leather pencil case!

🎨 **What it is** - Our super pigmented BFF Crème Gel Liner gives your eyes the prettiest pop of colour.

💖 **Why you'll luv it** - Creamy formula glides on smoothly for comfortable application in the waterline and makes blending super easy.

✔️ **Why you need it** - Effortlessly dries down for long-lasting, transfer-proof wear for colour that won't budge.

12 colourful shades you'll be obsessed with all in 1 kit! ♥

★★★★★ 93 reviews

¹¹ <https://colourpop.com/products/colour-me-obsessed-creme-gel-liner-roll-vault#view-ingredients>.

1 30. In the “Application Tips” section of the Colour Me Obsessed! Product’s webpage,
2 Defendant does not have a warning or use restriction listed for the Product.¹² Additionally, there is
3 not a warning in or by the ingredients list, despite the Product containing Harmful Ingredients.

4 31. Defendant regularly instructs and encourages consumers to use and apply ColourPop
5 Eye Makeup containing the Harmful Ingredients in and around the eye area.

6 **THE PRODUCTS ARE UNSAFE AND UNFIT FOR USE IN THE EYE AREA DUE TO**
7 **THE PRESENCE OF THE HARMFUL INGREDIENTS**

8 32. Defendant has engaged in unfair, unlawful, and fraudulent business conduct by
9 formulating, manufacturing, distributing, marketing, advertising, and selling ColourPop Eye
10 Makeup because the Products: (1) contain color additives that make them unreasonably dangerous
11 for their sole and intended purpose; and (2) are intentionally marketed and sold to be
12 indistinguishable from eyeshadow or eye makeup, their only reasonable and foreseeable use by
13 consumers is cosmetic application in the eye area, and Defendant’s promotional images, tutorials,
14 and other advertising materials instruct and encourage that said Products be used for cosmetic
15 application in the eye area.

16 33. Each of the Products is formulated with and contains one or more Harmful
17 Ingredients that render the Products unsafe, unfit, and inherently dangerous to use in the eye area.
18 Yet each of the Products is intentionally marketed and sold by ColourPop to be indistinguishable
19 from eyeshadow or eye makeup, the only reasonable and foreseeable use of the Products by
20 consumers is cosmetic application in the eye area, and Defendant’s promotional images, tutorials,
21 and other advertising materials instruct and encourage that said products be used for cosmetic
22 application in the eye area.

23 34. The eye area, both the eye itself and surrounding skin in the eye area, are more
24 permeable than the skin generally. Risks associated with an ingredient that may be tolerable for a
25 product designed for use on the face may become intolerable if the product is used in the eye area
26 due to this potential increased absorption of ingredients.

27
28 ¹² <https://colourpop.com/products/colour-me-obsessed-creme-gel-liner-roll-vault#view-ingredients>

1 35. Clinical evidence demonstrates that cosmetic material applied externally to the eye
2 area frequently migrates across the eyelid margin.¹³

3 36. Cream cosmetic products formulated without water are anhydrous and are shown to
4 have a higher migration rate when applied to the eye area than other formulations. This excelled
5 rate of migration is further heightened for persons with oily skin types or extra folds of eyelid
6 skin.¹⁴ Multiple ColourPop Eye Makeup Products are formulated without water, thus making them
7 especially dangerous for use in the eye area due to the presence of Harmful Ingredients.

8 37. If a cosmetic product containing a color additive with harmful impurities is applied
9 to the eye area, the harmful impurities frequently migrate across the eyelid margin into the eye
10 and/or penetrate through thin eye area skin tissue, creating the potential for dangerous side
11 effects.¹⁵

12 38. Adverse side effects associated with use of cosmetics containing color additives
13 unsafe for the eye area include posterior blepharitis, ocular surface irritation, tear film instability,
14 conjunctival pigmentation, corneal epithelium inflammation, blepharitis, ocular irritation and/or
15 pain, allergic dermatitis, and keratitis.¹⁶

16 _____
17 ¹³ See Ng, Alison Ph.D.; Evans, Katharine Ph.D.; North, Rachel V. Ph.D.; Purslow, Christine
18 Ph.D.. Migration of Cosmetic Products into the Tear Film. *Eye & Contact Lens: Science & Clinical
19 Practice* 41(5):p 304-309, September 2015. | DOI: 10.1097/ICL.000000000000124; see also Goto
20 T, Zheng X, Gibbon L, Ohashi Y. Cosmetic product migration onto the ocular surface:
21 exacerbation of migration after eyedrop instillation. *Cornea*. 2010 Apr;29(4):400-3. doi:
22 10.1097/ICO.0b013e3181bd4756. PMID: 20168215.

23 ¹⁴ See Draelos ZD. Eyelash Cosmetics. In: *Cosmetics in Dermatology*. New York, NY, Churchill
24 Livingstone, 1995. pp. 41–52.

25 ¹⁵ See Ng, Alison Ph.D.; Evans, Katharine Ph.D.; North, Rachel V. Ph.D.; Purslow, Christine
26 Ph.D.. Migration of Cosmetic Products into the Tear Film. *Eye & Contact Lens: Science & Clinical
27 Practice* 41(5):p 304-309, September 2015. | DOI: 10.1097/ICL.000000000000124; see also Goto
28 T, Zheng X, Gibbon L, Ohashi Y. Cosmetic product migration onto the ocular surface:
exacerbation of migration after eyedrop instillation. *Cornea*. 2010 Apr;29(4):400-3. doi:
10.1097/ICO.0b013e3181bd4756. PMID: 20168215.

¹⁶ See Gao Y, Kanengiser BE. Categorical evaluation of the ocular irritancy of cosmetic and
consumer products by human ocular instillation procedures. *J Cosmet Sci*. 2004 Jul-
Aug;55(4):317-25. PMID: 15386023.; see also Platia EV, Michels RG, Green WR. Eye-cosmetic-
Malik A, Claoué C. Transport and interaction of cosmetic product material within the ocular
surface: beauty and the beastly symptoms of toxic tears. *Cont Lens Anterior Eye*. 2012
Dec;35(6):247-59. doi: 10.1016/j.clae.2012.07.005. Epub 2012 Aug 11. PMID: 22890123.;
Coroneo MT, Rosenberg ML, Cheung LM. Ocular effects of cosmetic products and procedures.
Ocul Surf. 2006 Apr;4(2):94-102. doi: 10.1016/s1542-0124(12)70031-9. PMID: 16681080.

1 39. The Harmful Ingredients can cause physical injuries including eye pain, redness,
2 itching, skin irritation, rashes, and skin staining, and can cause damage through their toxicity when
3 they enter the body. Indeed, many of the Harmful Ingredients are eye irritants and can cause
4 serious eye irritation.

5 40. For example, D&C Red No. 7 is classified as an eye irritant and “causes serious eye
6 irritation.”¹⁷ If Red 7 comes into contact with one’s eyes, that person should “rinse cautiously with
7 water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue
8 rinsing.”¹⁸ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding
9 eyelids apart for thorough irrigation [and g]et immediate medical attention”¹⁹

10 41. D&C Red No. 27 is classified as an eye irritant and “causes eye irritation.”²⁰ If Red
11 27 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for
12 several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”²¹ Then,
13 he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for
14 thorough irrigation [and g]et immediate medical attention”²² Additionally, Red 27 “may be
15 cytotoxic, mutagenic, and inhibit certain mitochondrial functions.”²³

16 42. D&C Red No. 28 “[c]auses serious eye irritation.”²⁴ If Red 28 comes into contact
17 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
18 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”²⁵ Then, he or she should
19 “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough
20 irrigation [and g]et immediate medical attention.”²⁶

21 ¹⁷ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.007LC0-SDS.pdf.

22 ¹⁸ *Id.*

23 ¹⁹ *Id.*

24 ²⁰ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.027LM0-SDS.pdf.

25 ²¹ *Id.*

26 ²² *Id.*

27 ²³ https://pubchem.ncbi.nlm.nih.gov/compound/D-_-C-Red-no.-27.

28 ²⁴ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.028000-SDS.pdf.

²⁵ *Id.*

²⁶ *Id.*

1 43. FD&C Yellow No. 6 is “hazardous in case of eye contact (irritant)” and is acutely
2 toxic when orally ingested.²⁷ Safety sheets instruct handlers of Yellow 6 to “avoid contact with
3 eyes.”²⁸ In the event of eye contact, one should “check for and remove any contact lenses[, and
4 i]mmediately flush eyes with running water for at least 15 minutes, keeping eyelids open.”²⁹ Then,
5 he or she should “seek medical attention.”³⁰

6 44. D&C Yellow No. 10 is also associated with eye irritation.³¹ In the event of eye
7 contact, one should “flush eyes with water for 15 minutes[, g]et medical attention if irritation
8 occurs[, and, i]f symptoms persist, call a physician.”³²

9 45. FD&C Red No. 4 “causes eye irritation.”³³ If Red No. 4 comes into contact with
10 somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove
11 contact lenses if present and easy to do[, and c]ontinue rinsing.”³⁴ Then, he or she should “flush
12 with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and
13 g]et immediate medical attention.”³⁵

14 46. D&C Red No. 6, “causes eye irritation.”³⁶ If Red No. 6 comes into contact with
15 somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove
16 contact lenses if present and easy to do[, and c]ontinue rinsing.”³⁷ Then, he or she should “flush
17 with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and
18 g]et immediate medical attention.”³⁸

19 _____
20 ²⁷ <https://www.geneseo.edu/sites/default/files/users/247/Yellow%206.pdf>.

21 ²⁸ *Id.*

22 ²⁹ *Id.*

23 ³⁰ *Id.*

24 ³¹ https://www.spectrumchemical.com/media/sds/DC200_AGHS.pdf.

25 ³² *Id.*

26 ³³ <https://avitar-chemical.com/wp-content/uploads/2020/06/SDS-FDC-Red-No-4.pdf>.

27 ³⁴ *Id.*

28 ³⁵ *Id.*

³⁶ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.006LM0-SDS.pdf.

³⁷ *Id.*

³⁸ *Id.*

1 47. Safety data sheets instruct handlers of D&C Red No. 17 to “avoid contact with skin
2 and eyes”³⁹ “Eye wash facilities and emergency shower must be available when handling this
3 product.”⁴⁰ “Solid particles trapped behind the eyelid may cause abrasive damage.”⁴¹ Red 17
4 “[m]ay be slightly irritating to eyes.”⁴² In the event of eye contact, one should “rinse immediately
5 with plenty of water,” “remove any contact lenses and open eyelids wide apart,” “continue to rinse
6 for at least 15 minutes,” and “get medical attention if any discomfort continues.”⁴³

7 48. D&C Red No. 21 is classified as an eye irritant and “causes serious eye irritation.”⁴⁴
8 If Red 21 comes into contact with somebody’s eyes, that person should “rinse cautiously with
9 water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue
10 rinsing.”⁴⁵ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding
11 eyelids apart for thorough irrigation [and g]et immediate medical attention.”⁴⁶

12 49. D&C Red No. 30 is classified as an eye irritant and “causes serious eye irritation.”⁴⁷
13 If Red 30 comes into contact with somebody’s eyes, that person should “rinse cautiously with
14 water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue
15 rinsing.”⁴⁸ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding
16 eyelids apart for thorough irrigation [and g]et immediate medical attention.”⁴⁹

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19 ³⁹ <https://www.univarsolutions.co.uk/proxy/index/index/?e=0%3A3%3AGojX1BDc4Uci9TcgVcR5%2FbfgXGVsUqlY1trg0btLyC856StqALW0eowzr45PDzW4TIW1Oq0oexp6Guae5yxb0vPiPUhCcj3KymY5wywkg080TbH3fcgUGkOmDW6jBbQZSaRPN9Fxr0Bneb56MyTh1USlJcvDyWj1s83p9wNqN7QqQBe9Xnd6J0pk%3D>.

20
21 ⁴⁰ *Id.*

22 ⁴¹ *Id.*

23 ⁴² *Id.*

24 ⁴³ *Id.*

25 ⁴⁴ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.021LM0-SDS.pdf.

26 ⁴⁵ *Id.*

27 ⁴⁶ *Id.*

28 ⁴⁷ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.030LT0-SDS.pdf.

⁴⁸ *Id.*

⁴⁹ *Id.*

1 50. D&C Red No. 33 “causes serious eye irritation.”⁵⁰ If Red 33 comes into contact
2 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
3 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁵¹ Then, he or she should
4 “flush eyes with cool water for 15 minutes, [and g]et medical attention.”⁵²

5 51. D&C Violet No. 2 “causes serious eye irritation.”⁵³ If Violet 2 comes into contact
6 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
7 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁵⁴ Then, he or she should
8 “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough
9 irrigation [and g]et immediate medical attention.”⁵⁵

10 52. D&C Yellow No. 8 “may cause eye and skin irritation.”⁵⁶ If Yellow 8 comes into
11 contact with somebody’s eyes, he or she should “flush eyes with plenty of water for at least 15
12 minutes, occasionally lifting the upper and lower eyelids.”⁵⁷ “If irritation develops, [he or she
13 should] get medical aid.”⁵⁸

14 53. Users of D&C Yellow No. 10 should avoid “skin and eye contact.”⁵⁹ In the event of
15 eye contact, users should “make sure to remove any contact lenses from the eyes before rinsing[,
16 r]inse the eye with water immediately[, c]ontinue to rinse for at least 15 minutes[, and g]et medical
17 attention if any discomfort continues.”⁶⁰

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20 _____
⁵⁰ https://www.spectrumchemical.com/media/sd/DC145_SD.pdf.

21 ⁵¹ *Id.*

22 ⁵² *Id.*

23 ⁵³ https://spectracolors.com/wp-content/uploads/2017/04/7.FD_.0020E0-SDS.pdf.

24 ⁵⁴ *Id.*

25 ⁵⁵ *Id.*

26 ⁵⁶ <https://pim-resources.coleparmer.com/sds/24609.pdf>.

27 ⁵⁷ *Id.*

28 ⁵⁸ *Id.*

⁵⁹ <https://safety365.sevron.co.uk/substances/accessSDS/SDS-49777-57bebd5052649.89556561>.

⁶⁰ *Id.*

1 54. D&C Yellow No. 11 is “irritating to eyes.”⁶¹ In the event of eye contact, one should
2 “immediately flush with plenty of water for up to 15 minutes[while r]emov[ing] any contact lenses
3 and open[ing] eyes wide apart.”⁶²

4 55. D&C Orange No. 4 “causes serious eye irritation.”⁶³ If Orange 4 comes into contact
5 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
6 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁶⁴ Then, he or she should
7 “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough
8 irrigation [and g]et immediate medical attention.”⁶⁵

9 56. If D&C Green No. 8 comes into contact with somebody’s eyes, that person should
10 “flush with plenty of water or eye wash solution for several minutes[, and s]eek medical attention if
11 irritation persists.”⁶⁶ “Contact [of Green 8]with eyes may cause irritation.”⁶⁷ Notably, “the most
12 significant routes of overexposure for this product are by contact with skin or eyes.”⁶⁸

13 57. FD&C Green No. 3 “may cause temporary eye irritation.”⁶⁹ If Green 3 comes into
14 contact with somebody’s eyes, that person should “rinse immediately with plenty of water[,
15 r]emove any contact lenses and open eyelids wide apart[, and c]ontinue to rinse for at least 15
16 minutes.”⁷⁰ Further, they should “get medical attention if any discomfort continues.”⁷¹

17 _____
18 ⁶¹ <https://safety365.sevron.co.uk/substances/accessSDS/SDS-1397-572b31f54b6746.44957127>.

19 ⁶² *Id.*

20 ⁶³ https://spectracolors.com/wp-content/uploads/2017/04/2.FD_.004000-SDS.pdf.

21 ⁶⁴ *Id.*

22 ⁶⁵ *Id.*

23 ⁶⁶

24 https://www.praannaturals.com/downloads/msds/SDS_DC_Green_No_8_Color_Additive_DCGRE EN8US75.pdf.

25 ⁶⁷ *Id.*

26 ⁶⁸ *Id.*

27 ⁶⁹ <https://www.univarsolutions.co.uk/proxy/index/index/?e=0%3A3%3A5NAo97CdT0czy5tIPtZ PUP8slvKvfilyNfxsZ2XvPfJ0iIEpJN5P9QBff5%2FKiGsNL%2B1jkFGe3K%2FmVf%2Fvhtzciwe hKAXewy2Is2gW2tgr6oTT6AjN9mhxPEIH894bvJzZm%2FqboWqZtbr03iil0Q4fbQa9%2BvrAG uXPo22XbdtRoGyr3P5LVJaG3fs%3D>.

28 ⁷⁰ *Id.*

⁷¹ *Id.*

1 58. D&C Brown No. 1 is a “moderate eye irritant” and “causes severe eye irritation.”⁷²
2 “In case of eye contact” one should “immediately rinse eyes with plenty of water for at least 15
3 minutes[and c]onsult a physician.”⁷³

4 59. If a Product palette contains even one Harmful Ingredient, the *entire* palette is
5 unsafe and unfit for use in the eye area, even if an individual color in that palette does not contain
6 any Harmful Ingredients. Reasonable consumers do not know which of the various colors in a
7 given palette contain Harmful Ingredients, and therefore use the colors interchangeably. Colors
8 within a given palette tend to cross-contaminate other colors within the palette through the
9 reasonable and expected use of the palette. No reasonable consumer would buy the Products if
10 they knew that even one of the colors within the palette contained Harmful Ingredients.

11 60. ColourPop knows that these products are used in the eye area, and indeed labels,
12 packages, and markets them for such purpose. For example, ColourPop states under the
13 application tips section for its “Fade Into Hue” eyeshadow (which contains Harmful Ingredients) to
14 “[use] the pigments on your temples or underneath your brow,” which *is* in the immediate eye area,
15 even though the Products contain Harmful Ingredients.⁷⁴

16 ***Any Purported Disclaimer Language on Defendant’s Website Is Not Curative***

17 61. For a portion of the ColourPop Eye Makeup Products, Defendant’s website includes
18 vague language and inconsistent statements such as “* while not intended for use in the immediate
19 eye area, these shades can be used anywhere else on your face or body! we recommend using these
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21
22
23
24
25

26 _____
27 ⁷² <https://www.trc-canada.com/prod-img/MSDS/A189955MSDS.pdf>

28 ⁷³ *Id.*

⁷⁴ *See, e.g.*, <https://colourpop.com/products/fade-to-hue-pressed-powder-makeup-palette>

1 shades to enhance your overall look - for example, using the pigments on your temples or
2 underneath your brow.”⁷⁵

3
4 **application tips**

5 tips: apply with your favorite shadow brushes. flat and firmer brushes will give the most color payoff. fluffier
6 brushes are great for blending.

7 *while not intended for use in the immediate eye area, these shades can be used anywhere else on your face or
8 body! we recommend using these shades to enhance your overall look - for example, using the pigments on your
9 temples or underneath your brow.

10 62. This is neither a safety warning nor an adequate disclaimer because: (1) it does not
11 assist the consumer in understanding the danger; (2) it is designed and displayed in such a manner
12 that a reasonable consumer would not see, receive, or understand it; (3) it does not actually instruct
13 consumers to *not* use the product in the eye area; and (4) it specifically instructs consumers to use
14 the Products in the immediate eye area, which *includes* “underneath your brow.”

15 63. The substance and placement of any purported disclaimer by Defendant falls far
16 short of being prominent and conspicuous warnings. And, any such purported disclaimers are
17 contrary to the fact that Defendant specifically markets and sells the Products to be used in the eye
18 area.

19 64. Defendant’s purported disclaimers do nothing to assist the consumer in
20 understanding the known risks of using ColourPop Eye Makeup, nor do they suggest that any
21 known dangers exist.

22 65. Further, to the extent any disclaimer recommends consumers use the Products “on
23 your temples or **underneath your brow**,” it is in effect no disclaimer at all as it instructs
24 consumers to use the Products in precisely the most dangerous way possible.

25 66. Consumers can navigate through the entire purchasing process online at
26 ColourPop.com or with a third-party seller of the Products without ever encountering Defendant’s
27 hidden disclaimer.

28 ⁷⁵ <https://colourpop.com/products/fade-to-hue-pressed-powder-makeup-palette>

1 67. Further, the Products’ promotional images and Defendant’s marketing materials
2 undermine and are directly contrary to any such purported disclaimers because models are
3 repeatedly shown wearing specific eyeshadow colors that contain Harmful Ingredients on the eye
4 area.

5 68. Further, many ColourPop Eye Makeup products have no disclaimer whatsoever
6 even though they are formulated with Harmful Ingredients. For example, Defendant’s webpage for
7 its “Of Quartz” Product (which contains the Harmful Ingredient Yellow 10) does not include any
8 warning language, purported disclaimers, or online statements that suggest or otherwise indicate
9 that the product contains Harmful Ingredients (nor does its physical packaging). It does, however,
10 depict a model with the Product on her eye.⁷⁶

11 69. Finally, reasonable consumers do not regularly inspect ingredient lists for cosmetics
12 products. Instead, they trust cosmetic companies not to put potentially harmful ingredients into
13 products.

14 ***Plaintiff’s Experience***

15 70. Plaintiff Wilson purchased several of the Products, including but not limited to the
16 Menage a Muah Palette and Boudoir Noir Palette, (“Plaintiff’s Purchased Products”) for personal
17 cosmetic use. Plaintiff has, within the past 5 years, purchased the Products from the Ulta Beauty
18 store or website. Plaintiff’s most recent purchase occurred in 2021. The Menage A Muah and
19 Boudior Noir eyeshadow palettes purchased by Plaintiff each contain the Harmful Ingredients Red
20 7, Red 27, Red 28, Red 34, Yellow 6, and Yellow 10.

21 71. Plaintiff Wilson believed that Plaintiff’s Purchased Products were safe for their
22 intended use, namely for use around the eye area.

23 72. Plaintiff Wilson reasonably relied on Defendant’s representations and omissions
24 when she decided to purchase and use various ColourPop Eye Makeup products, including but not
25 limited to the Menage a Muah Palette and Boudoir Noir Palette, for use in the eye area.

26 73. At the time of purchase, Plaintiff Wilson was not aware of any warnings, safety
27 issues, or instructions for use indicating that the Products are not safe or fit for use in the eye area.

28 ⁷⁶ <https://colourpop.com/products/of-quartz-pressed-powder-palette>

1 74. Similarly, Plaintiff Wilson was not aware of any warnings or disclosures that the
2 Menage a Muah Palette and Boudoir Noir Palette contain color additives that are not safe or fit for
3 use in the eye area.

4 75. The Products Plaintiff purchased, like all of the Products at issue in this case are and
5 were: (1) advertised and marketed by Defendant for cosmetic use on the eye area; (2) advertised,
6 marketed, packaged, and sold to be indistinguishable from eyeshadow or eyeliner product; (3)
7 designed, formulated, and/or manufactured with Harmful Ingredients which render them unsafe
8 and unfit for their intended use and purpose (cosmetic application to the eye area); (4) designed,
9 formulated, and manufactured with substandard materials and/or construction which results in them
10 being unsafe and unfit for their intended use and purpose; and (5) Defendant deceptively omitted
11 and concealed these and other material facts from Plaintiff Wilson and other reasonable consumers.

12 76. As a result of Defendant's deceptive misrepresentations and fraudulent business
13 practices, Plaintiff Wilson suffered injury and loss of money, including but not limited to: (1)
14 Plaintiff Wilson did not receive any of the advertised benefits as described above; (2) Plaintiff
15 Wilson paid for ColourPop Eye Makeup products that are unsafe by virtue of their design,
16 formulation, construction, or workmanship; and (3) Plaintiff Wilson paid more for ColourPop Eye
17 Makeup products than they are worth because the Products, by virtue of being formulated with
18 and/or containing Harmful Ingredients, are unsafe and unfit to use for their sole intended purpose.

19 77. If Plaintiff Wilson had known that the Products are unfit for their intended use and
20 defective, and that the representations made by Defendant are false and misleading, she would not
21 have purchased the Products or would have paid substantially less than she did. Therefore,
22 Plaintiff Wilson did not receive the benefit of her bargain.

23 78. Plaintiff was further damaged because upon discovering that the Products are unfit
24 for their intended use and defective, and that the representations made by Defendant are false and
25 misleading, she had to cease using the Products she had already purchased. Plaintiff still has
26 unused Products in her possession. Because of the Defect, Plaintiff cannot use these remaining
27 Products and, accordingly, suffered economic loss.

1 79. Plaintiff will be unable to rely on the Products' marketing and advertising in the
 2 future, and so will be unable to purchase the Products in the future, although she would like to if
 3 they were reformulated to remove the Harmful Ingredients. Plaintiff continues to purchase eye
 4 makeup products, although she does not currently purchase the Products, and intends on
 5 purchasing eye makeup products in the future.

6 **CLASS ACTION ALLEGATIONS**

7 80. Plaintiff brings this action individually and as a representative of all those similarly
 8 situated, pursuant to Fed. R. Civ. P. 23, on behalf of the below-defined Class and Subclass:

9 **Class:**

10 All persons residing in the United States who purchased ColourPop Eye Makeup
 11 containing Harmful Ingredients during the maximum period permitted by law.

12 **California Subclass:**

13 All members of the Class who purchased ColourPop Eye Makeup containing
 14 Harmful Ingredients in California during the maximum period permitted by law.

15 81. Specifically excluded from these definitions are: (1) Defendant, any entity in which
 16 Defendant has a controlling interest, and its legal representatives, officers, directors, employees,
 17 assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge's
 18 staff or immediate family; and (3) Class Counsel.

19 82. **Numerosity:** The Members of the Classes are so numerous that joinder of all
 20 Members is impracticable. While the exact number of putative Class Members is presently
 21 unknown, it likely consists of tens of thousands of people geographically disbursed throughout the
 22 United States. The number of putative Class Members can be determined by sales information and
 23 other records in Defendant's possession. Moreover, joinder of all putative Class Members is not
 24 practicable given their numbers and geographic diversity. The Classes are readily identifiable from
 25 information and records in the possession of Defendant and their authorized retailers.

26 83. **Typicality:** The claims of the representative Plaintiff are typical in that Plaintiff,
 27 like all putative Class Members, purchased ColourPop Eye Makeup that was designed, formulated,
 28 manufactured, marketed, advertised, distributed, and sold by Defendant. Plaintiff, like all putative
 Class Members, has been damaged by Defendant's misconduct in that, inter alia, Plaintiff incurred

1 or will continue to incur damages as a result of overpaying for defective ColourPop Eye Makeup
2 Products that are inherently dangerous and not fit for their intended use. Furthermore, the factual
3 basis of Defendant's misconduct is common to all putative Class Members because Defendant has
4 engaged, and continues to engage, in systematic fraudulent behavior that was and is deliberate,
5 includes negligent misconduct, and results in the same injury to all putative Class Members.

6 84. **Commonality**: Common questions of law and fact exist as to all putative Class
7 Members. These questions predominate over questions that may affect only individual Class
8 Members because Defendant has acted on grounds generally applicable to the Classes. Such
9 common legal or factual questions include, inter alia:

- 10 (a) Whether ColourPop Eye Makeup is defective;
- 11 (b) Whether ColourPop Eye Makeup is misleadingly marketed, packaged, labeled
12 and/or sold for use in the eye area when it is not fit for that purpose;
- 13 (c) Whether ColourPop Eye Makeup is defectively designed and/or manufactured;
- 14 (d) Whether ColourPop Eyes Makeup is dangerous;
- 15 (e) Whether Defendant knew or reasonably should have known about the Defect prior
16 to distributing and selling ColourPop Eye Makeup to Plaintiff and the putative
17 Classes;
- 18 (f) Whether Defendant knew or reasonably should have known ColourPop Eye Makeup
19 was dangerous when Defendant packaged, marketed, advertised, specified,
20 instructed, encouraged, and otherwise represented that ColourPop Eye Makeup was
21 intended for use in the eye area;
- 22 (g) Whether Defendant concealed from, omitted, and/or failed to disclose to Plaintiff
23 and the putative Classes the dangers associated with ColourPop Eye Makeup as a
24 result of the Products' Harmful Ingredients;
- 25 (h) Whether Defendant breached the implied warranty of merchantability and the Song-
26 Beverly Consumer Warranty Act, relating to ColourPop Eye Makeup;
- 27 (i) Whether Defendant engaged in unfair, unconscionable, or deceptive trade practices
28 by selling and/or marketing defective ColourPop Eye Makeup;

- 1 (j) Whether Defendant violated Cal. Bus. & Prof. Code § 17500, *et seq.* (FAL);
- 2 (k) Whether Defendant violated Civil Code §§ 1750, *et seq.* (CLRA);
- 3 (l) Whether Defendant violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* (UCL);
- 4 (m) Whether Plaintiff and the putative Classes are entitled to damages, including
- 5 compensatory, exemplary, and statutory damages, and the amount of any such
- 6 damages;
- 7 (n) Whether Defendant should be enjoined from selling and marketing ColourPop Eye
- 8 Makeup containing Harmful Ingredients;
- 9 (o) Whether Defendant should be enjoined from selling, promoting, and advertising that
- 10 ColourPop Eye Makeup is safe and fit for use in the eye area when, in fact, the
- 11 Products contain color additives that are prohibited for use in the eye area, i.e. the
- 12 Harmful Ingredients; and
- 13 (p) Other issues which may be revealed in discovery.

14 85. **Adequate Representation**: Plaintiff will fairly and adequately protect the interests
15 of putative Class Members. Plaintiff has no interests that are antagonistic to those of putative Class
16 Members. Plaintiff has retained attorneys experienced in the prosecution of class actions,
17 including consumer and product defect class actions, and Plaintiff intends to prosecute this action
18 vigorously.

19 86. **Injunctive/Declaratory Relief**: The elements of Rule 23(b)(2) are met. Defendant
20 will continue to commit the unlawful practices alleged herein, and putative Class Members will
21 remain at an unreasonable and serious safety risk as a result of the Defect. Defendant has acted
22 and refused to act on grounds that apply generally to the putative Classes, such that final injunctive
23 relief and corresponding declaratory relief is appropriate respecting the Classes as a whole.

24 87. **Predominance and Superiority**: Plaintiff and putative Class Members have all
25 suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and
26 wrongful conduct. A class action is superior to other available methods for the fair and efficient
27 adjudication of the controversy. Absent a class action, putative Class Members would likely find
28 the cost of litigating their claims prohibitively high and would therefore have no effective remedy

1 at law. Because of the relatively small size of putative Class Members' individual claims, it is
2 likely that few putative Class Members could afford to seek legal redress for Defendant's
3 misconduct. Absent a class action, putative Class Members will continue to incur damages, and
4 Defendant's misconduct will continue without remedy. Class treatment of common questions of
5 law and fact would also be a superior method to multiple individual actions or piecemeal litigation
6 in that class treatment will conserve the resources of the courts and the litigants and will promote
7 consistency and efficiency of adjudication.

8 88. Plaintiff is not aware of any potential issues that would preclude the maintenance of
9 this class action.

10 89. Defendant has acted or refused to act on grounds generally applicable to the putative
11 Classes, thereby making final injunctive relief or corresponding declaratory relief with respect to
12 the putative Classes appropriate.

13 **COUNT I**
14 **Breach of Implied Warranty**
15 **(Individually and on behalf of the Classes)**

16 90. Plaintiff reasserts the allegations set forth in all preceding paragraphs and
17 incorporates such allegations by reference as if fully set forth herein.

18 91. Plaintiff brings this cause of action against Defendant individually and on behalf of
19 the Classes under California law.

20 92. As described above, Plaintiff has standing to pursue this claim because Plaintiff has
21 suffered an injury-in-fact and has lost money or property as a result of Defendant's conduct.

22 93. Defendant was at all relevant times the manufacturer, distributor, warrantor,
23 merchant, and/or seller of the ColourPop Eye Makeup. Defendant knew or had reason to know of
24 the specific use for which the ColourPop Eye Makeup was purchased, as evidenced by Defendant's
25 marketing efforts, website(s), social media accounts, advertisements, and other statements that
26 promote and encourage consumers to use the Products in the eye area.

27 94. By placing the ColourPop Eye Makeup into the stream of commerce, Defendant
28 provided Plaintiff and Class Members with implied warranties that ColourPop Eye Makeup was
merchantable and fit for the ordinary purposes for which it was sold.

1 95. However, the ColourPop Eye Makeup is not fit for its ordinary purpose—use in the
2 eye area—because it contains the Harmful Ingredients.

3 96. The Harmful Ingredients contained in ColourPop Eye Makeup prevent the Products
4 from being safely used for their intended purpose, and thus constitutes a breach of the implied
5 warranty of merchantability. These problems are caused and exacerbated by Defendant’s failure to
6 adequately disclose to or warn Plaintiff and consumers of the Defect and that ColourPop Eye
7 Makeup is not safe to use in the eye area. Defendant impliedly warranted that ColourPop Eye
8 Makeup was of merchantable quality and fit for such use. These implied warranties included,
9 among other things: (i) a warranty that ColourPop Eye Makeup manufactured, supplied,
10 distributed, and/or sold by Defendant was safe and reliable for use as eyeshadow, eyeliner, or other
11 cosmetic use in the eye area; and (ii) a warranty that ColourPop Eye Makeup would be fit for its
12 principal and intended use as eye makeup.

13 97. Contrary to the applicable implied warranties, ColourPop Eye Makeup, at the time
14 of sale and thereafter, was not fit for its ordinary and intended purpose of providing Plaintiff and
15 Class Members with a cosmetic product that can be safely applied to the eye area without risk of
16 injury. Instead, ColourPop Eye Makeup suffers from a defective design and/or defective
17 manufacturing, as alleged herein.

18 98. Defendant’s conduct described in this complaint constitutes a breach of implied
19 warranties under UCC §§ 2-314 and 2-315, as adopted in whole or in substance by statutes in all 50
20 states and the District of Columbia.

21 99. The ColourPop Eye Makeup was defective at the time of sale when it left the
22 exclusive control of Defendant or its agents.

23 100. Defendant’s intended beneficiaries of these implied warranties were ultimately
24 Plaintiff and members of the Classes, not third-party retailers, resellers, or distributors who sold the
25 product. Moreover, Defendant exercised substantial control over which outlets can carry and sell
26 ColourPop Eye Makeup, which are the same places that Plaintiff and Class Members purchased the
27 Products. In addition, Defendant’s warranties are in no way designed to apply to the third-party
28 retailers, resellers, or distributors who purchase the Products in bulk and then sell it on an

1 individual basis to consumers. Accordingly, these warranties are specifically designed to benefit
2 the individual consumers who purchased ColourPop Eye Makeup.

3 101. Plaintiff and Class Members sustained damages as a direct and proximate result of
4 Defendant's breaches in that they paid an amount for the product that they would not have
5 otherwise paid. Plaintiff and the Class also did not receive the value of the product they paid for—
6 the products are worthless or worth far less than Defendant represents due to the Defect.

7 102. Defendant was provided extensive pre-suit notice of the Defect, and as such has
8 been afforded a reasonable opportunity to cure its breach of warranty. Any additional time to do so
9 would be unnecessary and futile because Defendant has known of and concealed the Defect and
10 has refused to repair or replace the defect free of charge.

11 103. Plaintiff and the Classes have sustained, are sustaining, and will sustain damages if
12 Defendant continues to engage in such deceptive, unfair, and unreasonable conduct.

13 104. As a result of the breach of the implied warranty of merchantability, Plaintiff and
14 Class Members are entitled to legal and equitable relief, including injunctive relief, damages,
15 attorneys' fees, litigation expenses and costs, rescission, and/or other relief as deemed appropriate,
16 for an amount to compensate them for not receiving the benefit of their bargain.

17 **COUNT II**

18 **Breach of Implied Warranty Under the Song-Beverly Consumer Warranty Act**
19 **California Civil Code §§ 1790, *et seq.***
20 **(Individually and on behalf of the Classes)**

21 105. Plaintiff reasserts the allegations set forth in all preceding paragraphs and
22 incorporates such allegations by reference as if fully set forth herein.

23 106. Plaintiff brings this cause of action against Defendant individually and on behalf of
24 the Classes.

25 107. As described above, Plaintiff has standing to pursue this claim because Plaintiff has
26 suffered an injury-in-fact and has lost money or property as a result of Defendant's conduct.

27 108. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,
28 every sale of consumer goods in California is accompanied by both a manufacturer's and retail
seller's implied warranty that the goods are merchantable, as defined in that Act.

1 109. Defendant is in the business of manufacturing, assembling, producing and/or selling
2 the ColourPop Eye Makeup to retail buyers, and therefore are a “manufacturer” and “seller” within
3 the meaning of Cal. Civ. Code § 1791.

4 110. Defendant knew or had reason to know of the specific use for which the ColourPop
5 Eye Makeup was purchased, as evidenced by Defendant’s marketing efforts, website(s), social
6 media accounts, advertisements, and other statements that promote and encourage consumers to
7 use the Products in the eye area.

8 111. By placing the ColourPop Eye Makeup into the stream of commerce, Defendant
9 provided Plaintiff and Class Members with implied warranties that ColourPop Eye Makeup was
10 merchantable and fit for the ordinary purposes for which it was sold.

11 112. However, the ColourPop Eye Makeup is not fit for its ordinary purpose—use in the
12 eye area—because it contains the Harmful Ingredients.

13 113. The Harmful Ingredients contained in ColourPop Eye Makeup prevent the Products
14 from being safely used for their intended purpose, and thus constitutes a breach of the implied
15 warranty of merchantability. These problems are caused and exacerbated by Defendant’s failure to
16 adequately disclose to or warn Plaintiff and consumers of the Defect and that ColourPop Eye
17 Makeup is not safe to use in the eye area. Defendant impliedly warranted that ColourPop Eye
18 Makeup was of merchantable quality and fit for such use. These implied warranties included,
19 among other things: (i) a warranty that ColourPop Eye Makeup manufactured, supplied,
20 distributed, and/or sold by Defendant was safe and reliable for use as eyeshadow, eyeliner, or other
21 cosmetic use in the eye area; and (ii) a warranty that ColourPop Eye Makeup would be fit for its
22 principal and intended use as eye makeup.

23 114. Contrary to the applicable implied warranties, ColourPop Eye Makeup, at the time
24 of sale and thereafter, was not fit for its ordinary and intended purpose of providing Plaintiff and
25 Class Members with a cosmetic product that can be safely applied to the eye area without risk of
26 injury. Instead, ColourPop Eye Makeup suffers from a defective design and/or defective
27 manufacturing, as alleged herein.

1 115. Defendant’s actions, as complained of herein, breached the implied warranties that
2 ColourPop Eye Makeup was of merchantable quality and fit for such use. *See* Cal. Civ. Code §§
3 1791.1 and 1792.

4 116. The ColourPop Eye Makeup was defective at the time of sale when it left the
5 exclusive control of Defendant or its agents.

6 117. Defendant’s intended beneficiaries of its implied warranties were ultimately
7 Plaintiff and members of the Classes, not third-party retailers, resellers, or distributors who sold the
8 product. Moreover, Defendant exercised substantial control over which outlets can carry and sell
9 ColourPop Eye Makeup, which are the same places that Plaintiff and Class Members purchased the
10 Products. In addition, Defendant’s warranties are in no way designed to apply to the third-party
11 retailers, resellers, or distributors who purchase the Products in bulk and then sell it on an
12 individual basis to consumers. Accordingly, these warranties are specifically designed to benefit
13 the individual consumers who purchased ColourPop Eye Makeup.

14 118. Plaintiff and Class Members sustained damages as a direct and proximate result of
15 Defendant’s breaches in that they paid an amount for the product that they would not have
16 otherwise paid. Plaintiff and the Class also did not receive the value of the product they paid for—
17 the products are worthless or worth far less than Defendant represents due to the Defect.

18 119. Plaintiff and the Classes have sustained, are sustaining, and will sustain damages if
19 Defendant continues to engage in such deceptive, unfair, and unreasonable conduct.

20 120. Plaintiff and the Class Members seek all relief available under the Song-Beverly
21 Act.

22 121. Plaintiff and Class Members are entitled to legal and equitable relief, including
23 injunctive relief, damages, attorneys’ fees, litigation expenses and costs, rescission, and/or other
24 relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of
25 their bargain.

COUNT III
(IN THE ALTERNATIVE)
Unjust Enrichment or Restitution
(Individually and on behalf of the Classes)

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122. Plaintiff Wilson reasserts the allegations set forth in all preceding paragraphs and incorporates such allegations by reference as if fully set forth herein.

123. This alternative claim is asserted on behalf of Plaintiff and Class Members to the extent there is any determination that any warranties extended to Plaintiff and Class Members by Defendant do not govern the subject matter of the disputes with Defendant, or that Plaintiff does not have standing to assert such claims against Defendant. Plaintiff asserts this claim under California law.

124. Plaintiff and Class Members conferred a monetary benefit on Defendant, and Defendant received and had knowledge of this benefit.

125. By their wrongful acts and omissions described herein, including selling Defective ColourPop Eye Makeup, Defendant was unjustly enriched at the expense of Plaintiff and Class Members.

126. Plaintiff and Class Members' detriment and Defendant's enrichment were related to and flowed from the wrongful conduct alleged herein.

127. Defendant has profited from their unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiff and Class Members under circumstances in which it would be inequitable for Defendant to retain the profits, benefits, and other compensation obtained from their wrongful conduct, as described herein in connection with selling the defective ColourPop Eye Makeup.

128. Plaintiff and Class Members have been damaged as a direct and proximate result of Defendant's unjust enrichment because they would not have purchased the ColourPop Eye Makeup on the same terms or for the same price if they had known that the Products were defective or contained dangerous and harmful ingredients at the time of purchase.

129. Defendant either knew or should have known that payments rendered by Plaintiff and Class Members were given and received with the expectation that ColourPop Eye Makeup was

1 free of defects and was capable of providing the benefits represented by Defendant in the labeling,
2 marketing, and advertising of the Products. It is inequitable for Defendant to retain the benefit of
3 payments under these circumstances.

4 130. Plaintiff and Class Members seek restitution from Defendant and an order from this
5 Court proportionally disgorging all profits, benefits, and other compensation obtained by
6 Defendant from their wrongful conduct and establishing a constructive trust from which Plaintiff
7 and Class Members may seek restitution.

8 131. When required, Plaintiff and Class Members are in privity with Defendant because
9 Defendant's sale of ColourPop Eye Makeup was either direct or through authorized third-party
10 retailers and resellers. Purchases through authorized retailers and resellers are sufficient to create
11 privity because authorized third parties are Defendant's agents for the purpose of selling
12 ColourPop Eye Makeup.

13 132. As a direct and proximate result of Defendant's wrongful conduct and unjust
14 enrichment, Plaintiff and Class Members are entitled to restitution of, disgorgement of, and/or
15 imposition of a constructive trust upon all profits, benefits, and other compensation obtained by
16 Defendant for their inequitable and unlawful conduct.

17 133. Plaintiff and the members of the Class have suffered an injury in fact resulting in the
18 loss of money and/or property as a proximate result of the violations of law and wrongful conduct
19 of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct
20 at issue here. Legal remedies available to Plaintiff and Class Members are inadequate because they
21 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not
22 equally certain as restitution because the standard that governs restitution is different than the
23 standard that governs damages. Hence, the Court may award restitution even if it determines that
24 Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and
25 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of
26 money a defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including
27 restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original
28 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for

1 damages are not equally certain as restitution because claims for restitution entail fewer elements.
2 In short, significant differences in proof and certainty establish that any potential legal claim
3 cannot serve as an adequate remedy at law.

4 **COUNT IV**
5 **Violation of the California False Advertising Law (“FAL”)**
6 **California Business and Professions Code §§ 17500, *et seq.***
7 **(Individually and on behalf of the Classes)**

8 134. Plaintiff reasserts the allegations set forth in all preceding paragraphs and
9 incorporates such allegations by reference as if fully set forth herein.

10 135. Plaintiff brings this cause of action against Defendant individually and on behalf of
11 the Classes.

12 136. The conduct described herein took place within the state of California and
13 constitutes deceptive or false advertising in violation of California Business and Professions Code
14 §§ 17500, *et seq.*

15 137. California Business and Professions Code §§ 17500, *et seq.* prohibits deceptive or
16 misleading practices in connection with advertising or representations made for the purpose of
17 inducing, or which are likely to induce, consumers to purchase products.

18 138. Defendant, when it marketed, advertised, and sold ColourPop Eye Makeup,
19 represented to Plaintiff and Class Members that ColourPop Eye Makeup was free of defects and
20 safe when, in reality, the Products contained Harmful Ingredients that render them defective and
21 unsafe.

22 139. At the time of their misrepresentations and/or omissions, Defendant was either
23 aware that ColourPop Eye Makeup was defective and unsafe or was aware that it lacked the
24 information and/or knowledge required to make such a representation truthfully. Defendant
25 concealed, omitted, and failed to disclose this information to Plaintiff and Class Members.

26 140. Defendant’s packaging and product descriptions were false, misleading, and likely
27 to deceive Plaintiff and other reasonable consumers about the true nature of ColourPop Eye
28 Makeup and the fact that it should not be used in the eye area.

141. Defendant’s conduct therefore constitutes deceptive or misleading advertising.

1 142. Plaintiff Wilson has standing to pursue claims under the FAL because she
2 reasonably reviewed and relied on Defendant’s packaging, advertising, representations, and
3 marketing materials when selecting and purchasing ColourPop Eye Makeup.

4 143. In reliance on the statements made in Defendant’s advertising and marketing
5 materials, and Defendant’s omissions and concealment of material facts regarding the quality and
6 use of ColourPop Eye Makeup, Plaintiff and Class Members purchased ColourPop Eye Makeup.

7 144. Had Defendant disclosed the true defective nature of ColourPop Eye Makeup,
8 Plaintiff and Class Members would not have purchased the Products or would have paid
9 substantially less for them.

10 145. Upon discovering the true defective nature of ColourPop Eye Makeup, Plaintiff
11 stopped using the Products and still has unused Products in her possession. Because of the Defect,
12 Plaintiff cannot use the remaining Products and, accordingly, suffered economic loss.

13 146. As a direct and proximate result of Defendant’s actions, as set forth herein,
14 Defendant has received ill-gotten gains and/or profits, including but not limited to money from
15 Plaintiff Wilson and Class Members who purchased ColourPop Eye Makeup.

16 147. Plaintiff and Class Members seek injunctive relief, restitution, and disgorgement of
17 any monies wrongfully acquired or retained by Defendant by means of their deceptive or
18 misleading representations, including monies already obtained from Plaintiff and Class Members
19 as provided for by the California Business and Professions Code §§ 17500, *et seq.*

20 148. Plaintiff and the members of the Class have suffered an injury in fact resulting in the
21 loss of money and/or property as a proximate result of the violations of law and wrongful conduct
22 of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct
23 at issue here. Legal remedies available to Plaintiff and Class Members are inadequate because they
24 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not
25 equally certain as restitution because the standard that governs restitution is different than the
26 standard that governs damages. Hence, the Court may award restitution even if it determines that
27 Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and
28 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of

1 money a defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including
2 restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original
3 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for
4 damages are not equally certain as restitution because claims under the FAL entail fewer elements.
5 In short, significant differences in proof and certainty establish that any potential legal claim
6 cannot serve as an adequate remedy at law.

7 **COUNT V**
8 **Violation of the California Consumer Legal Remedies Act (“CLRA”),**
9 **Civil Code §§ 1750, *et seq.***
10 **(Individually and on behalf of the Classes)**

11 149. Plaintiff Wilson reasserts the allegations set forth in all preceding paragraphs and
12 incorporates such allegations by reference as if fully set forth herein.

13 150. Plaintiff Wilson brings this cause of action individually and on behalf of the
14 Classes.

15 151. The conduct described herein took place in the state of California and constitutes
16 unfair methods of competition or deceptive acts or practices in violation of the Consumers Legal
17 Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*

18 152. Plaintiff and California Class Members are “consumers” as defined by Civil Code §
19 1761(d) because they purchased ColourPop Eye Makeup for personal or household use.

20 153. Defendant is a “person” as defined by Civil Code § 1761(c).

21 154. The Products are “goods” as defined by Civil Code § 1761(a).

22 155. Plaintiff and Class Members’ purchases of ColourPop Eye Makeup are
23 “transactions” as defined by Civil Code 25 § 1761(e).

24 156. As set forth below, the CLRA deems the following unfair methods of competition
25 and unfair or deceptive acts or practices undertaken by any person in a transaction intended to
26 result or which does result in the sale or lease of goods or services to any consumer as unlawful.

27 (a) “Representing that goods ... have sponsorship, approval, characteristics,
28 ingredients, uses, benefits, or quantities which they do not have.” Civil Code §
1770(a)(5); and

1 (b) “Representing that goods ... are of a particular standard, quality, or grade, or that
2 goods are of a particular style or model, if they are of another.” Civil Code §
3 1770(a)(7).

4 157. Defendant engaged in unfair competition or unfair or deceptive acts or practices in
5 violation of Civil Code §§ 1770(a)(5) and (a)(7) when it represented, through its advertising and
6 other express representations, that ColourPop Eye Makeup had benefits or characteristics that it did
7 not actually have. In reality, the Products are defective, are unsafe, and unfit for their principal
8 intended purpose.

9 158. As detailed in the body of this complaint, Defendant has repeatedly engaged in
10 conduct that violates the CLRA and has made false representations and statements to consumers
11 about ColourPop Eye Makeup’s benefits, characteristics, and quality. Indeed, Defendant
12 concealed, omitted, and failed to disclose information and facts about the Products which are
13 material to Plaintiff and California Class Members.

14 159. ColourPop Eye Makeup was not and is not “reliable,” in that the product is not safe
15 and is of inferior quality and trustworthiness compared to other products in the industry. As
16 detailed above, Defendant further violated the CLRA when they falsely represented that ColourPop
17 Eye Makeup meets a certain standard or quality.

18 160. As detailed above, Defendant violated the CLRA when they advertised ColourPop
19 Eye Makeup with the intent not to sell the Product as advertised and knew that ColourPop Eye
20 Makeup was not as represented.

21 161. Defendant’s deceptive practices were specifically designed to induce Plaintiff and
22 Class Members to purchase ColourPop Eye Makeup for use in the eye area.

23 162. Defendant engaged in uniform marketing efforts in order to reach and persuade
24 Plaintiff and Class Members to purchase ColourPop Eye Makeup for use in the eye area.
25 Defendant’s packaging, advertising, marketing, website, and retail product identification and
26 specifications, contain numerous omissions as well as false and misleading statements regarding
27 the quality, safety, and reliability of ColourPop Eye Makeup for use in the eye area.
28

1 163. Despite Defendant’s omissions and representations, Defendant also concealed
2 information and material facts from Plaintiff Wilson and Class Members, who reasonably relied on
3 Defendant’s representations and omissions of material facts.

4 164. Defendant’s business practices are misleading and/or likely to mislead reasonable
5 consumers and should be enjoined.

6 165. On July 27, 2022, prior to the filing of her initial Complaint, Plaintiff’s counsel sent
7 Defendant a CLRA notice letter, which complies in all respects with California Civil Code §
8 1782(a). The letter also provided notice of breach of express and implied warranties. The letter was
9 sent via certified mail, return receipt requested, advising Defendant that it was in violation of the
10 CLRA and demanding that it cease and desist from such violations and make full restitution by
11 refunding the monies received therefrom. The letter stated that it was sent on behalf of Plaintiff and
12 all other similarly situated purchasers.

13 166. In accordance with Civil Code § 1780(a), Plaintiff and Class Members seek
14 damages and injunctive and equitable relief for Defendant’s violations of the CLRA, including an
15 injunction to enjoin Defendant from continuing their deceptive advertising and sales practices, and
16 compensatory and punitive damages.

17 167. Plaintiff also seeks punitive damages. Defendant’s conduct in deceiving customers
18 and the public, including Plaintiff, about the serious health consequences of using ColourPop Eye
19 Makeup for its intended purpose, concealing material information about the Products’ ingredients,
20 and continuing to launch new products with the identical safety defect, even after Plaintiff put
21 Defendant on notice of the dangers, constituted a conscious disregard or indifference to the life,
22 safety, or rights of persons exposed to such conduct.

23 168. Defendant actively and knowingly participated in the dissemination of
24 misrepresentations and concealment of material information related to the Products.

25 169. Defendant’s malicious and fraudulent conduct must be punished to deter future
26 harm to others. Therefore, exemplary damages are appropriate under that the circumstances.

27 170. Defendant has significant relationships with the State of California in regard to the
28 conduct giving rise to punitive damages and the law applicable to this particular issue.

1 180. There is no benefit to consumers or competition by allowing Defendant to
2 deceptively label, market, and advertise the Products.

3 181. Plaintiff Wilson and Class Members had no way of reasonably knowing that
4 ColourPop Eye Makeup was deceptively packaged, marketed, advertised, and labeled, or that
5 ColourPop Eye Makeup was defective, unsafe, and unsuitable for its intended use. Thus, Plaintiff
6 Wilson and Class Members could not have reasonably avoided the harm they suffered. Further, this
7 harm outweighs any legitimate justification, motive, or reason for packaging, marketing,
8 advertising, and labeling the Products in a deceptive and misleading manner. Accordingly,
9 Defendant's actions are immoral, unethical, unscrupulous, and offend well-established public
10 policies.

11 182. Unlawful Prong: A business act or practice is unlawful pursuant to the UCL if it
12 violates any other law or regulation.

13 183. Defendant's conduct violates the Sherman Laws. In addition to being inherently
14 dangerous, each of the Harmful Ingredients is designated by the State of California as unsuitable
15 and unapproved for cosmetic use in the eye area through California's Sherman Food, Drug, and
16 Cosmetic Laws, Cal. Health & Safety Code. §§ 109875, *et seq.* (the "Sherman Laws").

17 184. The Products are "cosmetics" and the Harmful Ingredients are "color additives" as
18 defined by the Sherman Laws. *See* Cal. Health & Safety Code §§ 109900; 109895.

19 185. The Products are thus adulterated, misbranded, unsafe, and illegal to sell or
20 advertise under the Sherman Laws. *See* Cal. Health & Safety Code § 111670 ("A cosmetic is
21 adulterated if it bears or contains any poisonous or deleterious substance that may render it
22 injurious to users under the conditions of use prescribed in the labeling or advertisement of the
23 cosmetic, or under conditions of use as are customary or usual."); *id.* § 111695 ("Any cosmetic is
24 adulterated if it is not a hair dye and it is, or it bears or contains, a color additive that is unsafe
25 within the meaning of Section 111665."); *id.* § 111700 ("It is unlawful for any person to
26 manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated."); *id.* § 111730
27 ("Any cosmetic is misbranded if its labeling is false or misleading in any particular."); *id.* § 110398
28 ("It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or

1 misbranded.”) *see also id.* § 111665. (“Any color additive shall be considered unsafe for use with
2 respect to any cosmetic unless there is in effect a regulation adopted pursuant to Section 110090
3 that prescribes its use in cosmetics.”).

4 186. Defendant’s conduct also violates the CLRA.

5 187. Unfairness Prong: A business act or practice is unfair pursuant to the UCL if it is
6 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

7 188. Defendant’s unfair acts and practices include but are not limited to knowingly
8 exposing consumers to unreasonable risk of injury by marketing and advertising the Products as
9 eyeshadow and/or for use in the eye area when using the Products in this manner is inherently
10 dangerous.

11 189. Fraudulent Prong: A business act or practice is fraudulent pursuant to the UCL if it
12 is likely to deceive members of the public.

13 190. Defendant took active measures to deceive Plaintiff by representing that the
14 Products were safe for their intended purpose through marketing and advertising communications
15 which instructs and encourages consumers to use the Products in an unsafe manner. Plaintiff relied
16 on these representations and omissions to her detriment.

17 191. Defendant’s actions, in disseminating misleading and deceptive statements to
18 consumers throughout the state of California and nationwide, including Plaintiff Wilson and Class
19 Members, were and are likely to deceive reasonable consumers by obfuscating and omitting the
20 Products’ true defective nature, and therefore constitute violations of Cal. Bus. & Prof. Code §§
21 17500, *et seq.*

22 192. Plaintiff Wilson and Class Members seek injunctive relief prohibiting Defendant
23 from continuing their unlawful, unfair, and fraudulent business practices, and all other equitable
24 relief available to the fullest extent permitted by law.

25 193. Plaintiff and Class Members are entitled to a full refund of the Products’ purchase
26 price because mislabeled cosmetics cannot legally be manufactured, advertised, distributed, or
27 sold, and thus, ColourPop Eye Makeup is worthless as a matter of law.
28

1 Products, which are advertised, packaged, marketed, and sold for use in the eye area, in fact are not
2 safe for use in the eye area.

3 199. Defendant knew about the Defect but nevertheless marketed, advertised, and sold
4 ColourPop Eye Makeup for use around the eyes and without warning consumers of the known
5 dangers.

6 200. The misrepresentations and omissions of material fact made by Defendant, upon
7 which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and
8 actually induced Plaintiff and Class members to purchase the defective Products.

9 201. The fraudulent actions of Defendant caused damage to Plaintiff and Class members,
10 who are entitled to damages and other legal and equitable relief as a result.

11 202. As a result of Defendant's willful and malicious conduct, punitive damages are
12 warranted.

13 **RELIEF DEMANDED**

14 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks a
15 judgment against Defendant, as follows:

- 16 a. For an order certifying the Classes under Fed. R. Civ. P. 23 and naming Plaintiff as
17 Class Representative and Plaintiff's attorneys as Class Counsel;
- 18 b. For an order declaring that Defendant's conduct violates the statutes referenced
19 herein;
- 20 c. For an order finding in favor of Plaintiff and the Classes on all counts asserted
21 herein;
- 22 d. For compensatory, statutory, and punitive damages in amounts to be determined by
23 the Court and/or jury;
- 24 e. For prejudgment interest on all amounts awarded;
- 25 f. For an order of restitution and all other forms of equitable monetary relief;
- 26 g. For injunctive relief as pled or as the Court may deem proper; and
- 27 h. For an order awarding Plaintiff and the Classes their reasonable attorneys' fees,
28 expenses, and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: April 27, 2023

BURSOR & FISHER, P.A.

By: /s/ Yeremey Krivoshey

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