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

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

Plaintiff,

v.

REVOLUTION BEAUTY, INC.,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Kacey Wilson (“Plaintiff”) brings this Class Action against Revolution Beauty,
 2 Inc. (“Revolution” or “Defendant”), individually and on behalf of all others similarly situated. The
 3 allegations herein are based on personal knowledge as to Plaintiff’s own conduct and are made on
 4 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 manufacture, 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”) that are formulated with and/or contain certain color additives that are not safe for use in
 12 the eye area (collectively “Revolution Eye Makeup” or “Products”).

13 3. Regardless of what Defendant calls each Revolution 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 Revolution 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. Revolution’s practices in this regard are substantially
 20 similar across all of the Products at issue.

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

26 ¹ Here, and throughout, the term “Products” shall refer to any item sold by Defendant for use in the
 27 eye area that contains one or more Harmful Ingredients. The Products include, but may not be
 28 limited to, the following palette names: “Tropical Twilight,” “Tropical Carnival,” “Affinity,”
 “Utopia,” “Spirituality,” “Flamboyance Flamingo,” “I Heart Revolution Burger Shadow Palette,”
 “Bird of Paradise,” “Candy Haze,” “Chilled,” “Good Vibes Chilled Vibes,” “Ultra Violette

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

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

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

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

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

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

Reflective Palette,” “Mesmerized, Ambient,” “Velvet Rose,” “Animal Ego,” “Pro Ultimate Crystal Shadow,” “Animal Magic,” “Coca Cola,” “Coca Cola Mini,” “Disney Fairytale,” and “Tasty Grilled Cheesy Burger.”

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

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

⁴ https://pubchem.ncbi.nlm.nih.gov/compound/D-_-C-Red-no.-27.

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 Product 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 Revolution 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 Revolution 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 conducts
23 substantial business within this District and a substantial portion of the events that gave rise to
24 Plaintiff’s claims occurred in this District.

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

PARTIES

18. Plaintiff Kacey Wilson is a resident of San Francisco, California, who purchased and used Revolution Eye Makeup within the relevant time period. Specifically, Plaintiff Wilson purchased and used Revolution’s “I Heart Revolution Burger Shadow Palette” eyeshadow palette, which contains the Harmful Ingredients and thus suffers from the Defect. Upon discovering that the I Heart Revolution Burger Shadow Palette contains Harmful Ingredients, Plaintiff stopped using the Product and still has unused Product in her possession. Because of the Defect, Plaintiff cannot use the remaining Product and, accordingly, suffered economic loss.

19. Revolution Beauty, Inc. (“Revolution”) is a corporation organized under the laws of Delaware, with its headquarters located in Illinois. Revolution designs, formulates, manufactures, markets, advertises, distributes, and sells a wide range of consumer cosmetic products, including but not limited to eyeshadow, eyeliner, eyelid primer, and eyebrow pencils, nationwide, including in Illinois and California.⁸

THE PRODUCTS

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

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

22. Defendant’s conduct was substantially similar with regard to the Products. The Products all: (1) are advertised and marketed by Defendant for cosmetic use on the eye area; (2) are advertised, marketed, packaged, and sold to be indistinguishable from eyeshadow or eyeliner products (3) are reasonably understood by consumers to be safe and suitable for use in the eye area; (4) are in fact unfit, unsafe, and unsuitable for use in the eye area. Defendant invented terms for

⁸ See generally <https://www.revolutionbeauty.us/> (last accessed May 2, 2023).

⁹ <https://www.ulta.com/brand/Revolution> (last accessed July 29, 2022).

1 the Products such as, inter alia, “shadow palettes,” “pigment palettes,” or “pressed powder
2 palettes,” but each of the Products is intended for use in the eye area.

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

6 ***Defendant’s Eyeshadow Palettes***

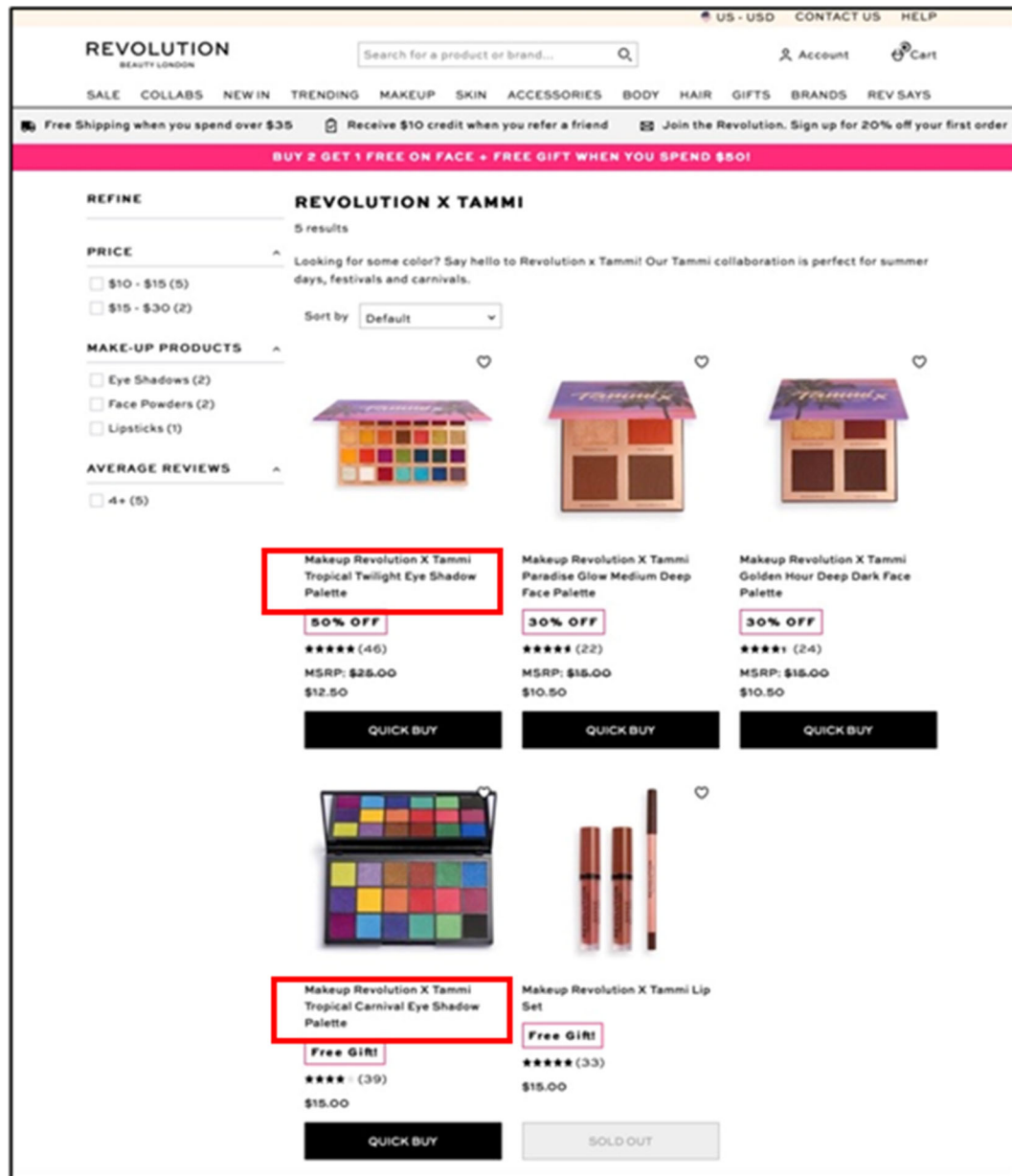
7 24. There are currently over 200 different variations of Revolution Eyeshadow Palettes
8 available for purchase at www.revolutionbeauty.us/makeup/eyes/eyeshadow-palettes.list, many of
9 which are formulated with and contain color additives that are prohibited for use around the eye
10 area.

11 25. The price of Revolution Eyeshadow Palettes can range from approximately \$3.00 to
12 \$45.00. Each product contains between 4-35 distinct colors or shades (“Color Pans”) which
13 Revolution often refers to as “Shadow Palettes” or “Color Palettes.”

14 26. But regardless of what Revolution calls each eyeshadow palette Product, they are
15 intentionally marketed and sold to be indistinguishable from eyeshadow or eye makeup, their only
16 reasonable and foreseeable use by consumers is cosmetic application in the eye area, and
17 Defendant’s promotional images, tutorials, and other advertising materials instruct and encourage
18 that said Products be used for cosmetic application in the eye area. Revolution’s practices in this
19 regard are substantially similar across all of the Products at issue. This is the crux of Defendant’s
20 misleading conduct: Defendant sells Products that should not and cannot be used in the eye area,
21 yet markets the Products such that their sole reasonable and foreseeable use by consumers is
22 cosmetic application in the eye area.

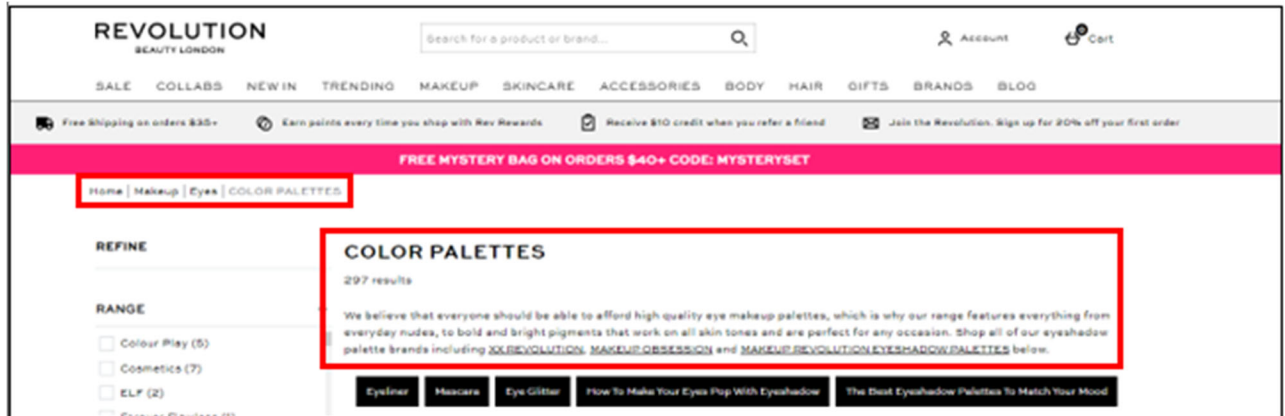
23 27. Previously, and for the majority of the class period, all “Color Palettes” sold on the
24 Revolution website were found under the “Eyes” subcategory of the “Makeup” category. On the
25 “Color Palettes” page of its website, Revolution stated “We believe that everyone should be able to
26 afford high quality eye makeup palettes, which is why our range features everything from
27 everyday nudes, to bold and bright pigments that work on all skin tones and are perfect for any
28 occasion. Shop all of our eyeshadow palette brands including XX REVOLUTION, MAKEUP

OBSESSION and MAKEUP REVOLUTION EYESHADOW PALETTES below.”¹⁰ (emphasis added). Revolution also identified Products as “Eyeshadow Palettes.”¹¹

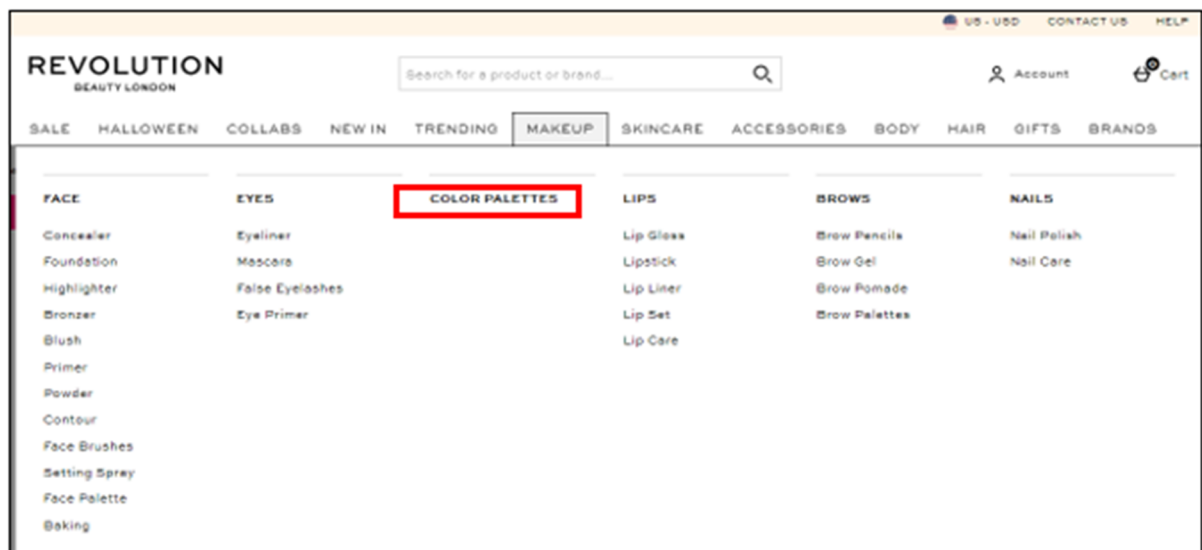


¹⁰ <https://www.revolutionbeauty.us/makeup/eyes/eyeshadow-palettes.list> (screenshot showing site as of July 29, 2022).

¹¹ <https://www.revolutionbeauty.us/tammi-tropical-twilight-eye-shadow-palette/12657095.html> (screenshot showing site as of February 21, 2022).



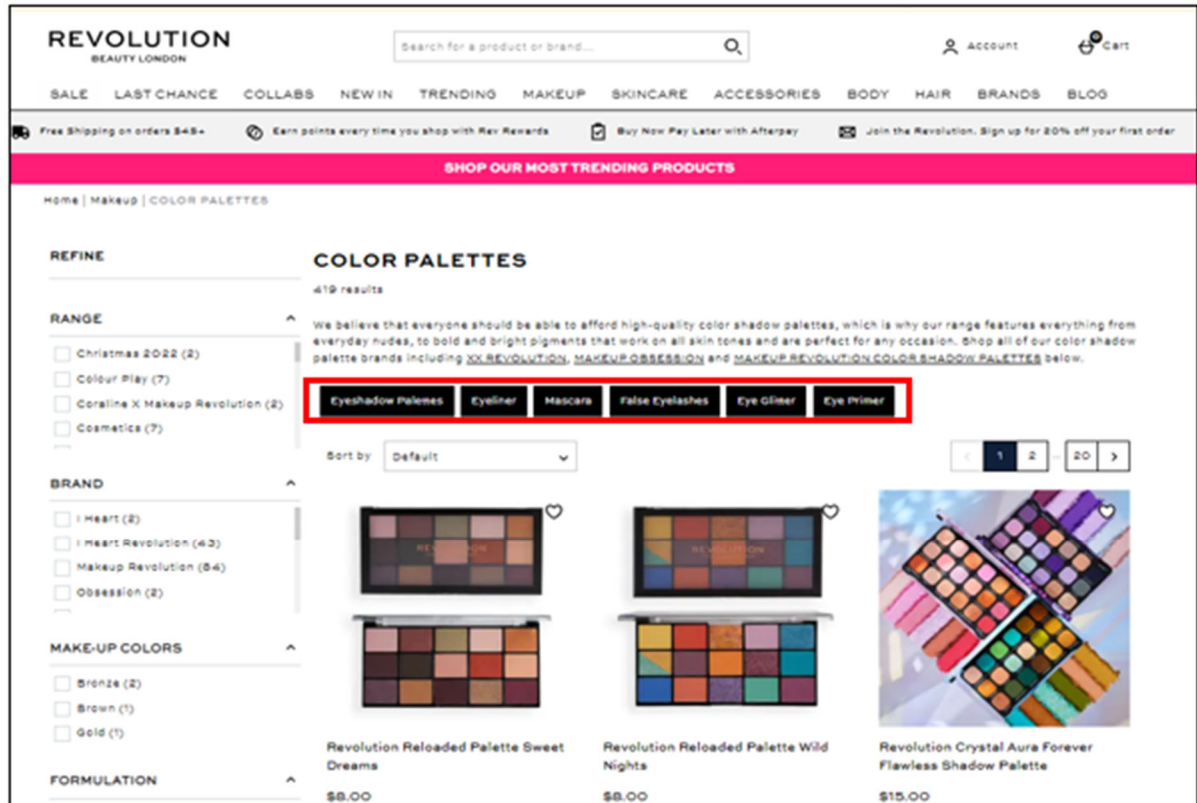
28. Since receipt of a demand letter from Plaintiff, Revolution has updated its website in an apparent attempt to cure the false advertising. “Color Palettes” are now listed under their own category, separately from “eyes.”¹²



29. However, the URL for the “Color Palettes,” still can be found at <https://www.revolutionbeauty.us/makeup/eyes/eyeshadow-palettes.list>, and the tags below the description still reference eye area use¹³:

¹² <https://www.revolutionbeauty.us/makeup/eyes/eyeshadow-palettes.list> (last visited October 4, 2022)

¹³ <https://www.revolutionbeauty.us/makeup/eyes/eyeshadow-palettes.list> (screenshot taken May 2, 2023).



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

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

31. Each of the Products is formulated with and contains one or more Harmful Ingredients that render the Products unsafe, unfit, and inherently dangerous to use in the eye area. Yet each of the Products is intentionally marketed and sold by Revolution to be indistinguishable from eyeshadow or eye makeup, the only reasonable and foreseeable use of the Products by

1 consumers is cosmetic application in the eye area, and Defendant's promotional images, tutorials,
 2 and other advertising materials instruct and encourage that said products be used for cosmetic
 3 application in the eye area.

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

8 33. Clinical evidence demonstrates that cosmetic material applied externally to the eye
 9 area frequently migrates across the eyelid margin.¹⁴

10 34. Cream cosmetic products formulated without water are anhydrous and are shown to
 11 have a higher migration rate when applied to the eye area than other formulations. This excelled
 12 rate of migration is further heightened for persons with oily skin types or extra folds of eyelid
 13 skin.¹⁵ Multiple Revolution Eye Makeup Products are formulated without water, thus making them
 14 especially dangerous for use in the eye area due to the presence of Harmful Ingredients.

15 35. If a cosmetic product containing a color additive with harmful impurities is applied
 16 to the eye area, the harmful impurities frequently migrate across the eyelid margin into the eye
 17 and/or penetrate through thin eye area skin tissue, creating the potential for dangerous side
 18 effects.¹⁶

19
 20
 21 ¹⁴ See Ng, Alison Ph.D.; Evans, Katharine Ph.D.; North, Rachel V. Ph.D.; Purslow, Christine
 22 Ph.D.. Migration of Cosmetic Products into the Tear Film. *Eye & Contact Lens: Science & Clinical*
 23 *Practice* 41(5):p 304-309, September 2015. | DOI: 10.1097/ICL.000000000000124; see also Goto
 24 T, Zheng X, Gibbon L, Ohashi Y. Cosmetic product migration onto the ocular surface:
 25 exacerbation of migration after eyedrop instillation. *Cornea*. 2010 Apr;29(4):400-3. doi:
 26 10.1097/ICO.0b013e3181bd4756. PMID: 20168215.

27 ¹⁵ See Draelos ZD. Eyelash Cosmetics. In: *Cosmetics in Dermatology*. New York, NY, Churchill
 28 Livingstone, 1995. pp. 41–52.

¹⁶ See Ng, Alison Ph.D.; Evans, Katharine Ph.D.; North, Rachel V. Ph.D.; Purslow, Christine
 Ph.D.. Migration of Cosmetic Products into the Tear Film. *Eye & Contact Lens: Science & Clinical*
Practice 41(5):p 304-309, September 2015. | DOI: 10.1097/ICL.000000000000124; see also Goto
 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.

36. Adverse side effects associated with use of cosmetics containing color additives unsafe for the eye area include posterior blepharitis, ocular surface irritation, tear film instability, conjunctival pigmentation, corneal epithelium inflammation, blepharitis, ocular irritation and/or pain, allergic dermatitis, and keratitis.¹⁷

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

38. For example, D&C Red No. 7 is classified as an eye irritant and “causes serious eye irritation.”¹⁸ If Red 7 comes into contact with one’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”¹⁹ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and g]et immediate medical attention”²⁰

39. D&C Red No. 27 is classified as an eye irritant and “causes eye irritation.”²¹ If Red 27 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”²² Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for

¹⁷ 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.

¹⁸ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.007LC0-SDS.pdf.

¹⁹ *Id.*

²⁰ *Id.*

²¹ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.027LM0-SDS.pdf.

²² *Id.*

thorough irrigation [and g]et immediate medical attention”²³ Additionally, Red 27 “may be cytotoxic, mutagenic, and inhibit certain mitochondrial functions.”²⁴

40. D&C Red No. 28 “[c]auses serious eye irritation.”²⁵ If Red 28 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”²⁶ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and g]et immediate medical attention.”²⁷

41. FD&C Yellow No. 6 is “hazardous in case of eye contact (irritant)” and is acutely toxic when orally ingested.²⁸ Safety sheets instruct handlers of Yellow 6 to “avoid contact with eyes.”²⁹ In the event of eye contact, one should “check for and remove any contact lenses[, and i]mmediately flush eyes with running water for at least 15 minutes, keeping eyelids open.”³⁰ Then, he or she should “seek medical attention.”³¹

42. D&C Yellow No. 10 is also associated with eye irritation.³² In the event of eye contact, one should “flush eyes with water for 15 minutes[, g]et medical attention if irritation occurs[, and, i]f symptoms persist, call a physician.”³³

43. FD&C Red No. 4 “causes eye irritation.”³⁴ If Red No. 4 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove

²³ *Id.*

²⁴ https://pubchem.ncbi.nlm.nih.gov/compound/D_-C-Red-no.-27.

²⁵ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.028000-SDS.pdf.

²⁶ *Id.*

²⁷ *Id.*

²⁸ <https://www.geneseo.edu/sites/default/files/users/247/Yellow%206.pdf>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² https://www.spectrumchemical.com/media/sds/DC200_AGHS.pdf.

³³ *Id.*

³⁴ <https://avitar-chemical.com/wp-content/uploads/2020/06/SDS-FDC-Red-No-4.pdf>.

contact lenses if present and easy to do[, and c]ontinue rinsing.”³⁵ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and g]et immediate medical attention.”³⁶

44. D&C Red No. 6, “causes eye irritation.”³⁷ If Red No. 6 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”³⁸ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and g]et immediate medical attention.”³⁹

45. Safety data sheets instruct handlers of D&C Red No. 17 to “avoid contact with skin and eyes”⁴⁰ “Eye wash facilities and emergency shower must be available when handling this product.”⁴¹ “Solid particles trapped behind the eyelid may cause abrasive damage.”⁴² Red 17 “[m]ay be slightly irritating to eyes.”⁴³ In the event of eye contact, one should “rinse immediately with plenty of water,” “remove any contact lenses and open eyelids wide apart,” “continue to rinse for at least 15 minutes,” and “get medical attention if any discomfort continues.”⁴⁴

46. D&C Red No. 21 is classified as an eye irritant and “causes serious eye irritation.”⁴⁵ If Red 21 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue

³⁵ *Id.*

³⁶ *Id.*

³⁷ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.006LM0-SDS.pdf.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰

<https://www.univarsolutions.co.uk/proxy/index/index/?e=0%3A3%3AGojX1BDc4Uci9TcgVcR5%2FbgXGVsUqlY1trg0btLyC856StqALW0eowzr45PDzW4TlW1Oq0oexp6Guae5yxb0vPiPUhCcj3KymY5wywkg080TbH3fcgUGkOmDW6jBbQZSaRPN9Fxr0Bneb56MyTh1USIjcvDyWjlS83p9wNqN7QqQBe9Xnd6J0pk%3D>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.021LM0-SDS.pdf.

1 rinsing.”⁴⁶ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding
2 eyelids apart for thorough irrigation [and g]et immediate medical attention.”⁴⁷

3 47. D&C Red No. 30 is classified as an eye irritant and “causes serious eye irritation.”⁴⁸
4 If Red 30 comes into contact with somebody’s eyes, that person should “rinse cautiously with
5 water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue
6 rinsing.”⁴⁹ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding
7 eyelids apart for thorough irrigation [and g]et immediate medical attention.”⁵⁰

8 48. D&C Red No. 33 “causes serious eye irritation.”⁵¹ If Red 33 comes into contact
9 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
10 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁵² Then, he or she should
11 “flush eyes with cool water for 15 minutes, [and g]et medical attention.”⁵³

12 49. D&C Violet No. 2 “causes serious eye irritation.”⁵⁴ If Violet 2 comes into contact
13 with somebody’s eyes, that person should “rinse cautiously with water for several minutes[,
14 r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁵⁵ Then, he or she should
15 “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough
16 irrigation [and g]et immediate medical attention.”⁵⁶

17 50. D&C Yellow No. 8 “may cause eye and skin irritation.”⁵⁷ If Yellow 8 comes into
18 contact with somebody’s eyes, he or she should “flush eyes with plenty of water for at least 15
19

20 ⁴⁶ *Id.*

21 ⁴⁷ *Id.*

22 ⁴⁸ https://spectracolors.com/wp-content/uploads/2017/04/4.FD_.030LT0-SDS.pdf.

23 ⁴⁹ *Id.*

24 ⁵⁰ *Id.*

25 ⁵¹ https://www.spectrumchemical.com/media/sd/DC145_SD.pdf.

26 ⁵² *Id.*

27 ⁵³ *Id.*

28 ⁵⁴ https://spectracolors.com/wp-content/uploads/2017/04/7.FD_.0020E0-SDS.pdf.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ <https://pim-resources.coleparmer.com/sds/24609.pdf>.

minutes, occasionally lifting the upper and lower eyelids.”⁵⁸ “If irritation develops, [he or she should] get medical aid.”⁵⁹

51. Users of D&C Yellow No. 10 should avoid “skin and eye contact.”⁶⁰ In the event of eye contact, users should “make sure to remove any contact lenses from the eyes before rinsing[, r]inse the eye with water immediately[, c]ontinue to rinse for at least 15 minutes[, and g]et medical attention if any discomfort continues.”⁶¹

52. D&C Yellow No. 11 is “irritating to eyes.”⁶² In the event of eye contact, one should “immediately flush with plenty of water for up to 15 minutes[while r]emov[ing] any contact lenses and open[ing] eyes wide apart.”⁶³

53. D&C Orange No. 4 “causes serious eye irritation.”⁶⁴ If Orange 4 comes into contact with somebody’s eyes, that person should “rinse cautiously with water for several minutes[, r]emove contact lenses if present and easy to do[, and c]ontinue rinsing.”⁶⁵ Then, he or she should “flush with plenty of cool water for at least 15 minutes, holding eyelids apart for thorough irrigation [and g]et immediate medical attention.”⁶⁶

54. If D&C Green No. 8 comes into contact with somebody’s eyes, that person should “flush with plenty of water or eye wash solution for several minutes[, and s]eek medical attention if

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ <https://safety365.sevron.co.uk/substances/accessSDS/SDS-49777-57bebd5052649.89556561>.

⁶¹ *Id.*

⁶² <https://safety365.sevron.co.uk/substances/accessSDS/SDS-1397-572b31f54b6746.44957127>.

⁶³ *Id.*

⁶⁴ https://spectracolors.com/wp-content/uploads/2017/04/2.FD_.004000-SDS.pdf.

⁶⁵ *Id.*

⁶⁶ *Id.*

1 irritation persists.”⁶⁷ “Contact [of Green 8] with eyes may cause irritation.”⁶⁸ Notably, “the most
2 significant routes of overexposure for this product are by contact with skin or eyes.”⁶⁹

3 55. FD&C Green No. 3 “may cause temporary eye irritation.”⁷⁰ If Green 3 comes into
4 contact with somebody’s eyes, that person should “rinse immediately with plenty of water[,
5 r]emove any contact lenses and open eyelids wide apart[, and c]ontinue to rinse for at least 15
6 minutes.”⁷¹ Further, they should “get medical attention if any discomfort continues.”⁷²

7 56. D&C Brown No. 1 is a “moderate eye irritant” and “causes severe eye irritation.”⁷³
8 “In case of eye contact” one should “immediately rinse eyes with plenty of water for at least 15
9 minutes[and c]onsult a physician.”⁷⁴

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

17
18
19 _____
20 ⁶⁷

21 https://www.praannaturals.com/downloads/msds/SDS_DC_Green_No_8_Color_Additive_DCGREEN8US75.pdf.

22 ⁶⁸ *Id.*

23 ⁶⁹ *Id.*

24 ⁷⁰

25 <https://www.univarsolutions.co.uk/proxy/index/index/?e=0%3A3%3A5NAo97CdT0czy5tIPtZPUp8slvKvfilyNfxsZ2XvPfJ0iIEpJN5P9QBff5%2FKiGsNL%2B1jkFGe3K%2FmVf%2FvhtzciwehKAXewy2Is2gW2tgr6oTT6AjN9mhxPEIH894bvJzZm%2FqboWqZtbr03iil0Q4fbQa9%2BvrAGuXPo22XbdtRoGyr3P5LVJaG3fs%3D>.

26 ⁷¹ *Id.*

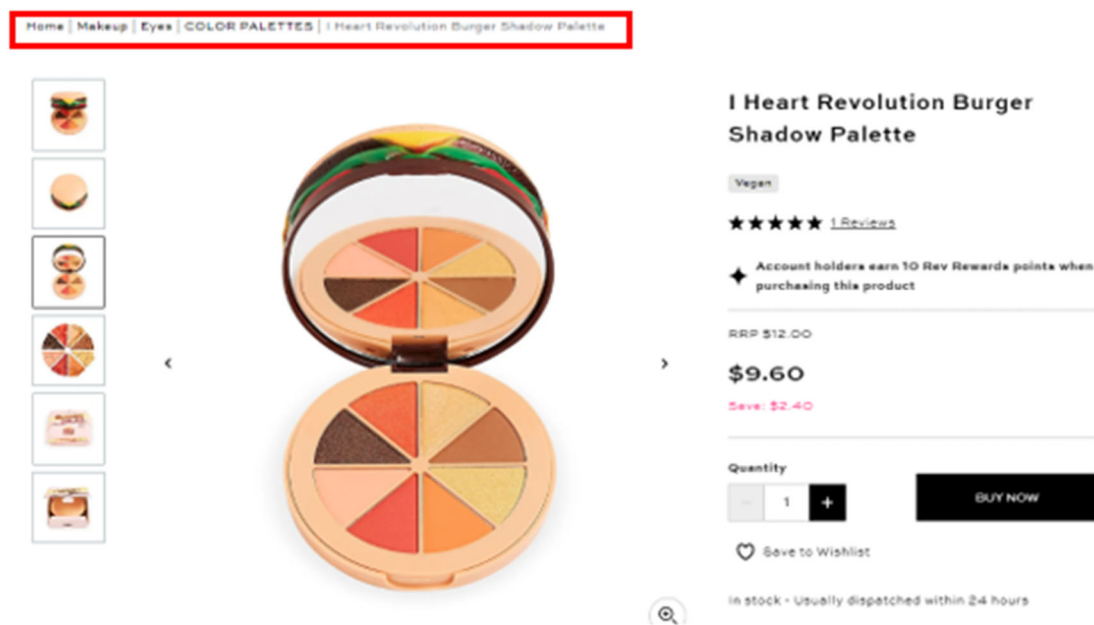
27 ⁷² *Id.*

28 ⁷³ <https://www.trc-canada.com/prod-img/MSDS/A189955MSDS.pdf>

⁷⁴ *Id.*

58. Revolution knows that these products are used in the eye area, and intentionally markets them for such purpose. But each of the Products is formulated with and contains one or more of the Harmful Ingredients.

59. Further, many Revolution Eye Makeup products were sold with no disclaimer whatsoever even though they are formulated with Harmful Ingredients. For example, Defendant's webpage for its "I Heart Revolution Burger Shadow Palette" Product (which contains the Harmful Ingredients Red 6 and Red 7) does not include any warning language, purported disclaimers, or online statements that suggest or otherwise indicate that the product contains Harmful Ingredients (nor does its physical packaging).⁷⁵ It did, however, list the product in the "Eyes" makeup category:



60. Since receiving a demand letter from Plaintiff, Revolution has removed the "eye" category language and added disclaimers about the danger of using the Products in the eye area on some of its product pages. For example, on the "I Heart Revolution Burger Shadow Palette" product page, Revolution now has a disclaimer that "*PRESSED PIGMENTS CONTAIN

⁷⁵ <https://www.revolutionbeauty.us/i-heart-burger-eye-shadow-palette/12656831.html> (last accessed July 29, 2022). Since this screenshot was collected, Defendant has updated its website as described *supra* ¶¶ 25-26. This screenshot was kept in to reflect how the website appeared throughout the class period.

INGREDIENTS WHICH ARE NOT PERMITTED FOR USE AROUND THE EYE AREA IN THE USA. WE RECOMMEND CHECKING THE PRODUCT PACKAGING FOR THE LATEST INGREDIENTS.”⁷⁶ However, the URL for this product page still contains the phrase “eye-shadow-palette,” and the “PRODUCT OVERVIEW” does not suggest anywhere else that the Product could be used other than in the eye area⁷⁷:

Home | Makeup | COLOR PALETTES | I Heart Revolution Burger Shadow Palette

I Heart Revolution Burger Shadow Palette

Vegan

★★★★★ 1 Review

Account holders earn 10 Rev Rewards points when purchasing this product

RRP \$12.00

\$9.60

Save: \$2.40

Quantity: 1 **BUY NOW**

Save to Wishlist

In stock - Usually dispatched within 24 hours

PRODUCT OVERVIEW

*PRESSED PIGMENTS CONTAIN INGREDIENTS WHICH ARE NOT PERMITTED FOR USE AROUND THE EYE AREA IN THE USA. WE RECOMMEND CHECKING THE PRODUCT PACKAGING FOR THE LATEST INGREDIENTS

The I Heart Revolution Galactic Chocolate Palette lets you create looks that are out of this world. An intergalactic mixture of universal pinks, cosmic shimmers, spaced out blues and earthy browns for the most creative looks in the galaxy.

Apply with a dry brush or wet the brush with one of the I Heart Revolution Fixing sprays for a dazzling finish.

Shadow shades:

- Supernova - matte pale cream
- Constellation - deep shimmery taupe

LIVE CHAT

Our operators are Online

Average connection time 25 secs

START CHAT

⁷⁶ <https://www.revolutionbeauty.us/i-heart-burger-eye-shadow-palette/12656831.html> (Screenshot taken October 4, 2022).

⁷⁷ *Id.*

Plaintiff's Experience

61. Plaintiff Wilson purchased Defendant's "I Heart Revolution Burger Shadow Palette," ("Plaintiff's Purchased Product") for personal cosmetic use in or around . Plaintiff purchased the Product within the past 5 years from the Ulta Beauty website. Plaintiff's most recent purchase occurred in 2021.

62. Plaintiff Wilson believed that Plaintiff's Purchased Product was safe for its intended use, namely for use around the eye area.

63. Plaintiff Wilson reasonably relied on Defendant's representations and omissions when she decided to purchase Plaintiff's Purchased Product for use in the eye area, and subsequently use Plaintiff's Purchased Product in the eye area.

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

65. Similarly, Plaintiff Wilson was not aware of any warnings or disclosures that the Plaintiff's Purchased Product contains color additives that are not safe or fit for use in the eye area.

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

67. As a result of Defendant's deceptive misrepresentations and fraudulent business practices, Plaintiff Wilson suffered injury and loss of money, including but not limited to: (1) Plaintiff Wilson did not receive any of the advertised benefits as described above; (2) Plaintiff Wilson paid for a Revolution Eye Makeup Product that is unsafe by virtue of its design, formulation, construction, or workmanship; and (3) Plaintiff Wilson paid more for a Revolution

1 Eye Makeup product than it is worth because the Products, by virtue of being formulated with
2 and/or containing Harmful Ingredients, is unsafe and unfit to use for its sole intended purpose.

3 68. If Plaintiff Wilson had known that the Products are unfit for their intended use and
4 defective, and that the representations made by Defendant are false and misleading, she would not
5 have purchased the Product or would have paid substantially less than she did. Therefore, Plaintiff
6 Wilson did not receive the benefit of her bargain.

7 69. Plaintiff was further damaged because upon discovering that the Products are unfit
8 for their intended use and defective, and that the representations made by Defendant are false and
9 misleading, she had to cease using the Product she had already purchased. Plaintiff still has unused
10 Product in her possession. Because of the Defect, Plaintiff cannot use her remaining Product and,
11 accordingly, suffered economic loss.

12 70. Plaintiff will be unable to rely on the Products' marketing and advertising in the
13 future, and so will be unable to purchase the Products in the future, although she would like to if
14 they were reformulated to remove the Harmful Ingredients. Plaintiff continues to purchase eye
15 makeup products, although she does not currently purchase the Products, and intends on
16 purchasing eye makeup products in the future.

17 **CLASS ACTION ALLEGATIONS**

18 71. Plaintiff brings this action individually and as representatives of all those similarly
19 situated, pursuant to Fed. R. Civ. P. 23, on behalf of the below-defined Class and Subclass:

20 **Class:**

21 All persons residing in the United States who purchased Revolution Eye Makeup
22 containing Harmful Ingredients during the maximum period permitted by law.

23 **California Subclass:**

24 All members of the Class who purchased Revolution Eye Makeup containing Harmful
25 Ingredients in California during the maximum period permitted by law.

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

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

74. **Typicality**: The claims of the representative Plaintiff are typical in that Plaintiff, like all putative Class Members, purchased Revolution Eye Makeup that was designed, formulated, 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 or will continue to incur damages as a result of overpaying for defective Revolution Eye Makeup Products that are inherently dangerous and not fit for their intended use. Furthermore, the factual basis of Defendant's misconduct is common to all putative Class Members because Defendant has engaged, and continues to engage, in systematic fraudulent behavior that was and is deliberate, includes negligent misconduct, and results in the same injury to all putative Class Members.

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

- (a) Whether Revolution Eye Makeup is defective;
- (b) Whether Revolution Eye Makeup is misleadingly marketed, packaged, labeled and/or sold for use in the eye area when it is not fit for that purpose;
- (c) Whether Revolution Eye Makeup is defectively designed and/or manufactured;
- (d) Whether Revolution Eyes Makeup is dangerous;
- (e) Whether Defendant knew or reasonably should have known about the Defect prior to distributing and selling Revolution Eye Makeup to Plaintiff and the putative Classes;

- (f) Whether Defendant knew or reasonably should have known Revolution Eye Makeup was dangerous when Defendant packaged, marketed, advertised, specified, instructed, encouraged, and otherwise represented that Revolution Eye Makeup was intended for use in the eye area;
- (g) Whether Defendant concealed from, omitted, and/or failed to disclose to Plaintiff and the putative Classes the dangers associated with Revolution Eye Makeup as a result of the Products' Harmful Ingredients;
- (h) Whether Defendant breached the implied warranty of merchantability and the Song-Beverly Consumer Warranty Act, relating to Revolution Eye Makeup;
- (i) Whether Defendant engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Revolution Eye Makeup;
- (j) Whether Defendant violated Cal. Bus. & Prof. Code § 17500, *et seq.* (FAL);
- (k) Whether Defendant violated Civil Code §§ 1750, *et seq.* (CLRA);
- (l) Whether Defendant violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* (UCL);
- (m) Whether Plaintiff and the putative Classes are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of any such damages;
- (n) Whether Defendant should be enjoined from selling and marketing Revolution Eye Makeup containing Harmful Ingredients;
- (o) Whether Defendant should be enjoined from selling, promoting, and advertising that Revolution Eye Makeup is safe and fit for use in the eye area when, in fact, the Products contain color additives that are prohibited for use in the eye area, i.e. the Harmful Ingredients; and
- (p) Other issues which may be revealed in discovery.

76. **Adequate Representation**: Plaintiff will fairly and adequately protect the interests of putative Class Members. Plaintiff has no interests that are antagonistic to those of putative Class Members. Plaintiff has retained attorneys experienced in the prosecution of class actions,

1 including consumer and product defect class actions, and Plaintiff intends to prosecute this action
2 vigorously.

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

8 78. **Predominance and Superiority**: Plaintiff and putative Class Members have all
9 suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and
10 wrongful conduct. A class action is superior to other available methods for the fair and efficient
11 adjudication of the controversy. Absent a class action, putative Class Members would likely find
12 the cost of litigating their claims prohibitively high and would therefore have no effective remedy
13 at law. Because of the relatively small size of putative Class Members' individual claims, it is
14 likely that few putative Class Members could afford to seek legal redress for Defendant's
15 misconduct. Absent a class action, putative Class Members will continue to incur damages, and
16 Defendant's misconduct will continue without remedy. Class treatment of common questions of
17 law and fact would also be a superior method to multiple individual actions or piecemeal litigation
18 in that class treatment will conserve the resources of the courts and the litigants and will promote
19 consistency and efficiency of adjudication.

20 79. Plaintiff is not aware of any potential issues that would preclude the maintenance of
21 this class action.

22 80. Defendant has acted or refused to act on grounds generally applicable to the putative
23 Classes, thereby making final injunctive relief or corresponding declaratory relief with respect to
24 the putative Classes appropriate.

25 **COUNT I**
26 **Breach of Implied Warranty**
(Individually and on behalf of the Classes)

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

1 82. Plaintiff brings this cause of action against Defendant individually and on behalf of
2 the Classes under California law.

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

5 84. Defendant was at all relevant times the manufacturer, distributor, warrantor,
6 merchant, and/or seller of the Revolution Eye Makeup. Defendant knew or had reason to know of
7 the specific use for which the Revolution Eye Makeup was purchased, as evidenced by
8 Defendant's marketing efforts, website(s), social media accounts, advertisements, and other
9 statements that promote and encourage consumers to use the Products in the eye area.

10 85. By placing the Revolution Eye Makeup into the stream of commerce, Defendant
11 provided Plaintiff and Class Members with implied warranties that Revolution Eye Makeup was
12 merchantable and fit for the ordinary purposes for which it was sold.

13 86. However, the Revolution Eye Makeup is not fit for its ordinary purpose—use in the
14 eye area—because it contains the Harmful Ingredients.

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

25 88. Contrary to the applicable implied warranties, Revolution Eye Makeup, at the time
26 of sale and thereafter, was not fit for its ordinary and intended purpose of providing Plaintiff and
27 Class Members with a cosmetic product that can be safely applied to the eye area without risk of
28

1 injury. Instead, Revolution Eye Makeup suffers from a defective design and/or defective
2 manufacturing, as alleged herein.

3 89. Defendant's conduct described in this complaint constitutes a breach of implied
4 warranties under UCC §§ 2-314 and 2-315, as adopted in whole or in substance by statutes in all 50
5 states and the District of Columbia.

6 90. The Revolution Eye Makeup was defective at the time of sale when it left the
7 exclusive control of Defendant or its agents.

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

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

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

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

26 95. As a result of the breach of the implied warranty of merchantability, Plaintiff and
27 Class Members are entitled to legal and equitable relief, including injunctive relief, damages,
28

attorneys' fees, litigation expenses and costs, rescission, and/or other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

COUNT II

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

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

97. Plaintiff brings this cause of action against Defendant individually and on behalf of the Classes.

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

99. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*, 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.

100. Defendant is in the business of manufacturing, assembling, producing and/or selling the Revolution Eye Makeup to retail buyers, and therefore are a "manufacturer" and "seller" within the meaning of Cal. Civ. Code § 1791.

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

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

103. However, the Revolution Eye Makeup is not fit for its ordinary purpose—use in the eye area—because it contains the Harmful Ingredients.

104. The Harmful Ingredients contained in Revolution Eye Makeup prevent the Products from being safely used for their intended purpose, and thus constitutes a breach of the implied

1 warranty of merchantability. These problems are caused and exacerbated by Defendant's failure to
2 adequately disclose to or warn Plaintiff and consumers of the Defect and that Revolution Eye
3 Makeup is not safe to use in the eye area. Defendant impliedly warranted that Revolution Eye
4 Makeup was of merchantable quality and fit for such use. These implied warranties included,
5 among other things: (i) a warranty that Revolution Eye Makeup manufactured, supplied,
6 distributed, and/or sold by Defendant was safe and reliable for use as eyeshadow, eyeliner, or other
7 cosmetic use in the eye area; and (ii) a warranty that Revolution Eye Makeup would be fit for its
8 principal and intended use as eye makeup.

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

14 106. Defendant's actions, as complained of herein, breached the implied warranties that
15 Revolution Eye Makeup was of merchantable quality and fit for such use. *See* Cal. Civ. Code §§
16 1791.1 and 1792.

17 107. The Revolution Eye Makeup was defective at the time of sale when it left the
18 exclusive control of Defendant or its agents.

19 108. Defendant's intended beneficiaries of its implied warranties were ultimately
20 Plaintiff and members of the Classes, not third-party retailers, resellers, or distributors who sold the
21 product. Moreover, Defendant exercised substantial control over which outlets can carry and sell
22 Revolution Eye Makeup, which are the same places that Plaintiff and Class Members purchased
23 the Products. In addition, Defendant's warranties are in no way designed to apply to the third-party
24 retailers, resellers, or distributors who purchase the Products in bulk and then sell it on an
25 individual basis to consumers. Accordingly, these warranties are specifically designed to benefit
26 the individual consumers who purchased Revolution Eye Makeup.

27 109. Plaintiff and Class Members sustained damages as a direct and proximate result of
28 Defendant's breaches in that they paid an amount for the product that they would not have

otherwise paid. Plaintiff and the Class also did not receive the value of the product they paid for—the products are worthless or worth far less than Defendant represents due to the Defect.

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

111. Plaintiff and the Class Members seek all relief available under the Song-Beverly Act.

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

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

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

114. 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.

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

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

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

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

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

10 120. Defendant either knew or should have known that payments rendered by Plaintiff
11 and Class Members were given and received with the expectation that Revolution Eye Makeup was
12 free of defects and was capable of providing the benefits represented by Defendant in the labeling,
13 marketing, and advertising of the Products. It is inequitable for Defendant to retain the benefit of
14 payments under these circumstances.

15 121. Plaintiff and Class Members seek restitution from Defendant and an order from this
16 Court proportionally disgorging all profits, benefits, and other compensation obtained by
17 Defendant from their wrongful conduct and establishing a constructive trust from which Plaintiff
18 and Class Members may seek restitution.

19 122. When required, Plaintiff and Class Members are in privity with Defendant because
20 Defendant's sale of Revolution Eye Makeup was either direct or through authorized third-party
21 retailers and resellers. Purchases through authorized retailers and resellers are sufficient to create
22 privity because authorized third parties are Defendant's agents for the purpose of selling
23 Revolution Eye Makeup.

24 123. As a direct and proximate result of Defendant's wrongful conduct and unjust
25 enrichment, Plaintiff and Class Members are entitled to restitution of, disgorgement of, and/or
26 imposition of a constructive trust upon all profits, benefits, and other compensation obtained by
27 Defendant for their inequitable and unlawful conduct.
28

124. Plaintiff and the members of the Class have suffered an injury in fact resulting in the loss of money and/or property as a proximate result of the violations of law and wrongful conduct of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct at issue here. Legal remedies available to Plaintiff and Class Members are inadequate because they are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not equally certain as restitution because the standard that governs restitution is different than the standard that governs damages. Hence, the Court may award restitution even if it determines that Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and restitution are not the same amount. Unlike damages, restitution is not limited to the amount of money a defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for damages are not equally certain as restitution because claims for restitution entail fewer elements. In short, significant differences in proof and certainty establish that any potential legal claim cannot serve as an adequate remedy at law.

COUNT IV

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

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

126. Plaintiff brings this cause of action against Defendant individually and on behalf of the Classes.

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

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

1 129. Defendant, when it marketed, advertised, and sold Revolution Eye Makeup,
2 represented to Plaintiff and Class Members that Revolution Eye Makeup was free of defects and
3 safe when, in reality, the Products contained Harmful Ingredients that render them defective and
4 unsafe.

5 130. At the time of their misrepresentations and/or omissions, Defendant was either
6 aware that Revolution Eye Makeup was defective and unsafe or was aware that it lacked the
7 information and/or knowledge required to make such a representation truthfully. Defendant
8 concealed, omitted, and failed to disclose this information to Plaintiff and Class Members.

9 131. Defendant's packaging and product descriptions were false, misleading, and likely
10 to deceive Plaintiff and other reasonable consumers about the true nature of Revolution Eye
11 Makeup and the fact that it should not be used in the eye area.

12 132. Defendant's conduct therefore constitutes deceptive or misleading advertising.

13 133. Plaintiff Wilson has standing to pursue claims under the FAL because she
14 reasonably reviewed and relied on Defendant's packaging, advertising, representations, and
15 marketing materials when selecting and purchasing Revolution Eye Makeup.

16 134. In reliance on the statements made in Defendant's advertising and marketing
17 materials, and Defendant's omissions and concealment of material facts regarding the quality and
18 use of Revolution Eye Makeup, Plaintiff and Class Members purchased Revolution Eye Makeup.

19 135. Had Defendant disclosed the true defective nature of Revolution Eye Makeup,
20 Plaintiff and Class Members would not have purchased the Products or would have paid
21 substantially less for them.

22 136. Upon discovering the true defective nature of Revolution Eye Makeup, Plaintiff
23 stopped using the Products and still has unused Products in her possession. Because of the Defect,
24 Plaintiff cannot use the remaining Products and, accordingly, suffered economic loss.

25 137. As a direct and proximate result of Defendant's actions, as set forth herein,
26 Defendant has received ill-gotten gains and/or profits, including but not limited to money from
27 Plaintiff Wilson and Class Members who purchased Revolution Eye Makeup.
28

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

139. Plaintiff and the members of the Class have suffered an injury in fact resulting in the loss of money and/or property as a proximate result of the violations of law and wrongful conduct of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct at issue here. Legal remedies available to Plaintiff and Class Members are inadequate because they are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not equally certain as restitution because the standard that governs restitution is different than the standard that governs damages. Hence, the Court may award restitution even if it determines that Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and restitution are not the same amount. Unlike damages, restitution is not limited to the amount of money a defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for damages are not equally certain as restitution because claims under the FAL entail fewer elements. In short, significant differences in proof and certainty establish that any potential legal claim cannot serve as an adequate remedy at law.

COUNT V

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

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

141. Plaintiff Wilson brings this cause of action individually and on behalf of the Classes.

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

4 143. Plaintiff and California Class Members are “consumers” as defined by Civil Code §
5 1761(d) because they purchased Revolution Eye Makeup for personal or household use.

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

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

8 146. Plaintiff and Class Members’ purchases of Revolution Eye Makeup are
9 “transactions” as defined by Civil Code 25 § 1761(e).

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

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

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

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

22 149. As detailed in the body of this complaint, Defendant has repeatedly engaged in
23 conduct that violates the CLRA and has made false representations and statements to consumers
24 about Revolution Eye Makeup’s benefits, characteristics, and quality. Indeed, Defendant
25 concealed, omitted, and failed to disclose information and facts about the Products which are
26 material to Plaintiff and California Class Members.

1 150. Revolution Eye Makeup was not and is not “reliable,” in that the product is not safe
2 and is of inferior quality and trustworthiness compared to other products in the industry. As
3 detailed above, Defendant further violated the CLRA when they falsely represented that
4 Revolution Eye Makeup meets a certain standard or quality.

5 151. As detailed above, Defendant violated the CLRA when they advertised Revolution
6 Eye Makeup with the intent not to sell the Product as advertised and knew that Revolution Eye
7 Makeup was not as represented.

8 152. Defendant’s deceptive practices were specifically designed to induce Plaintiff and
9 Class Members to purchase Revolution Eye Makeup for use in the eye area.

10 153. Defendant engaged in uniform marketing efforts in order to reach and persuade
11 Plaintiff and Class Members to purchase Revolution Eye Makeup for use in the eye area.
12 Defendant’s packaging, advertising, marketing, website, and retail product identification and
13 specifications, contain numerous omissions as well as false and misleading statements regarding
14 the quality, safety, and reliability of Revolution Eye Makeup for use in the eye area.

15 154. Despite Defendant’s omissions and representations, Defendant also concealed
16 information and material facts from Plaintiff Wilson and Class Members, who reasonably relied on
17 Defendant’s representations and omissions of material facts.

18 155. Defendant’s business practices are misleading and/or likely to mislead reasonable
19 consumers and should be enjoined.

20 156. On July 28, 2022, Plaintiff’s counsel sent Defendant a CLRA notice letter, which
21 complies in all respects with California Civil Code § 1782(a). The letter also provided notice of
22 breach of express and implied warranties. The letter was sent via certified mail, return receipt
23 requested, advising Defendant that it was in violation of the CLRA and demanding that it cease and
24 desist from such violations and make full restitution by refunding the monies received therefrom.
25 The letter stated that it was sent on behalf of Plaintiff and all other similarly situated purchasers.

26 157. In accordance with Civil Code § 1780(a), Plaintiff and Class Members seek
27 damages and injunctive and equitable relief for Defendant’s violations of the CLRA, including an
28

1 injunction to enjoin Defendant from continuing their deceptive advertising and sales practices, and
2 compensatory and punitive damages.

3 158. Plaintiff also seeks punitive damages. Defendant's conduct in deceiving customers
4 and the public, including Plaintiff, about the serious health consequences of using Revolution Eye
5 Makeup for its intended purpose, concealing material information about the Products' ingredients,
6 and continuing to launch new products with the identical safety defect, even after Plaintiff put
7 Defendant on notice of the dangers, constituted a conscious disregard or indifference to the life,
8 safety, or rights of persons exposed to such conduct.

9 159. Defendant actively and knowingly participated in the dissemination of
10 misrepresentations and concealment of material information related to the Products.

11 160. Defendant's malicious and fraudulent conduct must be punished to deter future
12 harm to others. Therefore, exemplary damages are appropriate under that the circumstances.

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

15 162. The malicious conduct described herein occurred and arose from Defendant's
16 headquarters in California from where Defendant made corporate decisions related to selling,
17 promoting, advertising, and labeling the Products. Therefore, Cal. Civ. Code § 3294 applies to the
18 punitive damages' aspect of this case.

19 163. Pursuant to California Civil Code § 1780(a)(1)-(5) and § 1780(e), Plaintiff seeks
20 damages, an order enjoining Defendant from the unlawful practices described above, a declaration
21 that Defendant's conduct violates the Consumers Legal Remedies Act, reasonable attorneys' fees
22 and litigation costs, and any other relief the Court deems proper under the CLRA.

23 **COUNT VI**

24 **Violations of the California Unfair Competition Law ("UCL"),** 25 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*** 26 **(Individually and on behalf of the Classes)**

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

1 165. Plaintiff Wilson brings this cause of action individually and on behalf of the
2 Classes.

3 166. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

4 167. Plaintiff Wilson and Class Members suffered an injury, by virtue of purchasing
5 defective cosmetic products, because Defendant misrepresented and/or omitted material facts about
6 the Products’ true quality, reliability, safety, use, and ingredients.

7 168. Had Plaintiff Wilson and Class Members known about Defendant’s
8 misrepresentations and/or omissions of material fact, they would not have purchased the Products
9 or would have paid significantly less for them.

10 169. Upon discovering Defendant’s misrepresentations and/or omissions of material fact,
11 Plaintiff stopped using the Products and still has unused Products in her possession. Because of the
12 Defect, Plaintiff cannot use the remaining Products and, accordingly, suffered economic loss.

13 170. Defendant’s conduct, as alleged herein, violates the laws and public policies of
14 California, as set out in the preceding paragraphs of this complaint.

15 171. There is no benefit to consumers or competition by allowing Defendant to
16 deceptively label, market, and advertise the Products.

17 172. Plaintiff Wilson and Class Members had no way of reasonably knowing that
18 Revolution Eye Makeup was deceptively packaged, marketed, advertised, and labeled, or that
19 Revolution Eye Makeup was defective, unsafe, and unsuitable for its intended use. Thus, Plaintiff
20 Wilson and Class Members could not have reasonably avoided the harm they suffered. Further, this
21 harm outweighs any legitimate justification, motive, or reason for packaging, marketing,
22 advertising, and labeling the Products in a deceptive and misleading manner. Accordingly,
23 Defendant’s actions are immoral, unethical, unscrupulous, and offend well-established public
24 policies.

25 173. Unlawful Prong: A business act or practice is unlawful pursuant to the UCL if it
26 violates any other law or regulation.

27 174. Defendant’s conduct violates the Sherman Laws. In addition to being inherently
28 dangerous, each of the Harmful Ingredients is designated by the State of California as unsuitable

1 and unapproved for cosmetic use in the eye area through California’s Sherman Food, Drug, and
2 Cosmetic Laws, Cal. Health & Safety Code. §§ 109875, *et seq.* (the “Sherman Laws”).

3 175. The Products are “cosmetics” and the Harmful Ingredients are “color additives” as
4 defined by the Sherman Laws. *See* Cal. Health & Safety Code §§ 109900; 109895.

5 176. The Products are thus adulterated, misbranded, unsafe, and illegal to sell or
6 advertise under the Sherman Laws. *See* Cal. Health & Safety Code § 111670 (“A cosmetic is
7 adulterated if it bears or contains any poisonous or deleterious substance that may render it
8 injurious to users under the conditions of use prescribed in the labeling or advertisement of the
9 cosmetic, or under conditions of use as are customary or usual.”); *id.* § 111695 (“Any cosmetic is
10 adulterated if it is not a hair dye and it is, or it bears or contains, a color additive that is unsafe
11 within the meaning of Section 111665.”); *id.* § 111700 (“It is unlawful for any person to
12 manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated.”); *id.* § 111730
13 (“Any cosmetic is misbranded if its labeling is false or misleading in any particular.”); *id.* § 110398
14 (“It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or
15 misbranded.”) *see also id.* § 111665. (“Any color additive shall be considered unsafe for use with
16 respect to any cosmetic unless there is in effect a regulation adopted pursuant to Section 110090
17 that prescribes its use in cosmetics.”).

18 177. Defendant’s conduct also violates the CLRA.

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

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

25 180. Fraudulent Prong: A business act or practice is fraudulent pursuant to the UCL if it
26 is likely to deceive members of the public.

27 181. Defendant took active measures to deceive Plaintiff by representing that the
28 Products were safe for their intended purpose through marketing and advertising communications

1 which instructs and encourages consumers to use the Products in an unsafe manner. Plaintiff relied
2 on these representations and omissions to her detriment.

3 182. Defendant's actions, in disseminating misleading and deceptive statements to
4 consumers throughout the state of California and nationwide, including Plaintiff Wilson and Class
5 Members, were and are likely to deceive reasonable consumers by obfuscating and omitting the
6 Products' true defective nature, and therefore constitute violations of Cal. Bus. & Prof. Code §§
7 17500, *et seq.*

8 183. Plaintiff Wilson and Class Members seek injunctive relief prohibiting Defendant
9 from continuing their unlawful, unfair, and fraudulent business practices, and all other equitable
10 relief available to the fullest extent permitted by law.

11 184. Plaintiff and Class Members are entitled to a full refund of the Products' purchase
12 price because mislabeled cosmetics cannot legally be manufactured, advertised, distributed, or
13 sold, and thus, Revolution Eye Makeup is worthless as a matter of law.

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

COUNT VII

Fraud

(Individually and on behalf of the Classes)

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

187. Plaintiff Wilson brings this cause of action individually and on behalf of the Classes under California law.

188. As discussed above, Defendant provided Plaintiff and Class Members with materially false or misleading information about the Revolution Eye Makeup. Specifically, Defendant instructed consumers to use the Products in the eye area and represented, through its advertising and other express representations that the Products were intended for cosmetic use on the eye area and/or that the products were safe for use in the eye area.

189. Further, Defendant concealed, omitted, and failed to disclose information and facts about the Products which are material to Plaintiff and California Class Members, namely that the Products, which are advertised, packaged, marketed, and sold for use in the eye area, in fact are not safe for use in the eye area.

190. Defendant knew about the Defect but nevertheless marketed, advertised, and sold Revolution Eye Makeup for use around the eyes and without warning consumers of the known dangers.

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

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

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

RELIEF DEMANDED

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

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

JURY TRIAL DEMANDED

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

Dated: May 4, 2023

BURSOR & FISHER, P.A.

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