

BURSOR & FISHER, P.A.

Yeremey Krivoshey (State Bar No. 295032)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ykrivoshey@bursor.com

BURSOR & FISHER, P.A.

Matthew A. Girardi (*PHV* application forthcoming)
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: mgirardi@bursor.com

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.:

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 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”) 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 Specifically, the Products are inherently dangerous because they are formulated with and/or
14 contain the following color additives: FD&C Red No. 4; D&C Red No. 6, 7, 17, 21, 22, 27, 28, 30,
15 31, 33, 34, 36; D&C Violet No. 2; Ext. D&C Violet No. 2; FD&C Yellow No. 6; D&C Yellow No.
16 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
17 Green No. 3; D&C Brown No. 1; and/or D&C Blue No. 4 (the “Harmful Ingredients”).¹

18 3. The United States Food and Drug Administration (“FDA”) is responsible for
19 approving individual color additives and setting usage restrictions. In addition to being inherently
20 dangerous, each of the Harmful Ingredients is designated by the FDA as unsuitable and
21 unapproved for cosmetic use in the eye area.²

22 4. The presence of one or more Harmful Ingredients renders the Products unsafe for
23 use in the eye area (the “Defect”). The Products are thus adulterated and misbranded under the
24 federal Food, Drug, and Cosmetics Act (“FDCA”). Accordingly, it is unlawful for Defendant to
25 advertise, promote, market, or sell ColourPop Eye Makeup. Nonetheless, Defendant’s marketing,

26 _____
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.

² See <https://www.fda.gov/cosmetics/cosmetic-ingredient-names/color-additives-permitted-use-cosmetics>

1 advertising, public statements, and social media posts and videos, encourage and instruct
2 consumers to use the Products in the eye area.

3 5. Defendant markets ColourPop Eye Makeup for a purpose (cosmetic application
4 around the eye area) for which it cannot be used for both legally and because such use is inherently
5 dangerous. The Products cannot be used for their principal intended purpose. The Products are
6 thus worthless by virtue of the Defect.

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

10 7. At all relevant times, Defendant knew about the Defect and that the Products were
11 banned by the FDA, but nevertheless marketed, advertised, and sold ColourPop Eye Makeup for
12 use around the eyes without warning consumers of the known dangers.

13 8. As a direct and proximate result of Defendant's misleading conduct, concealment of
14 the Defect, and failure to adequately warn consumers about the presence of the Harmful
15 Ingredients and the fact that the Products are banned by the FDA, Plaintiff and other similarly
16 situated consumers ("Class" or "Class Members") purchased and/or used the Product to their
17 detriment.

18 9. Plaintiff and putative Class Members were unaware of the Defect and that the
19 Products are banned by the FDA at the time they purchased the Products. Had Plaintiff and Class
20 Members known that ColourPop Eye Makeup contains a Defect rendering it unfit for its intended
21 purpose and that they are banned by the FDA, they would not have purchased the Products or
22 would have paid substantially less for the Products.

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

26 11. All of the Products suffer from the same Defect and are similarly mislabeled and
27 falsely advertised because each of the Products contains one or more ingredients the FDA has
28 deemed not fit for use around the eye area.

1 eyelid primer, and eyebrow pencils, nationwide, including in California.³ Defendant’s misleading
2 and unlawful marketing, advertising and product information concerning the Products was
3 conceived, reviewed, approved, and otherwise controlled from Defendant’s California
4 headquarters. Defendant’s misleading marketing concerning the Products was coordinated at,
5 emanated from, and was developed at its California headquarters. All critical decisions regarding
6 the misleading marketing and advertising of the Products were made in California.

7 **THE PRODUCTS**

8 18. ColourPop Eye Makeup is sold at retail locations throughout the United States,
9 including Ulta Beauty stores, and the Products are also available for purchase online at
10 www.colourpop.com and through third-party retailers’ websites.⁴

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

16 20. The Products, which are sold online by Defendant at www.Colourpop.com as well as
17 by third-party retailers, are all: (1) advertised and marketed by Defendant for cosmetic use on the
18 eye area; (2) are reasonably understood by consumers to be safe and suitable for use in the eye
19 area; and (3) purchased and used by consumers for cosmetic use on the eye area even though sale
20 for such use is prohibited by FDA regulations.

21 ***Defendant’s Eyeshadow Palettes***

22 21. There are currently over 100 different variations of ColourPop Eyeshadow Palettes
23 available for purchase at www.colourpop.com/collections/shadow-palette, many of which are
24 formulated with and contain color additives that are prohibited for use around the eye area.

27 ³ See generally <https://colourpop.com/> (last accessed July 29, 2022).

28 ⁴ <https://www.ulta.com/brand/colourpop> (last accessed July 29, 2022).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.