

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

Solis v. Coty, Inc. and Noxell Corporation

Solis · No. 3:22-cv-00400-BAS-NLS · Decided March 7, 2023

SUMMARY

The United States District Court for the Southern District of California grants Defendants’ Rule 12(b)(1) motion and dismisses Plaintiff’s amended consumer-protection class-action complaint without prejudice for lack of subject-matter jurisdiction. The court concludes that the plaintiff failed to adequately allege a concrete economic injury or injury-in-fact arising from her purchase of CoverGirl TruBlend Pressed Powder, including under benefit-of-the-bargain and overpayment theories. The court grants Plaintiff leave to file a second amended complaint.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Cynthia Bashant                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 7, 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | 3:22-cv-00400-BAS-NLS                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Defendants moved to dismiss the amended consumer-protection class-action complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The court granted the Rule 12(b)(1) motion for lack of Article III standing and dismissed the amended complaint without prejudice, granting leave to file a second amended complaint.                                                                                                                                                |
| STANDARD OF REVIEW    | For a facial Rule 12(b)(1) challenge to subject-matter jurisdiction, the court evaluates the allegations under a standard comparable to Rule 12(b)(6), accepts factual allegations as true, and draws reasonable inferences in the plaintiff's favor. The plaintiff must clearly allege facts establishing injury in fact, causation, and redressability. The court may not resolve genuinely disputed facts when jurisdiction depends on factual issues intertwined with the merits. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

## TOPICS

consumer protection

class actions

subject matter jurisdiction

pleadings

motions to dismiss

## PRACTICE AREAS

consumer protection

civil procedure

constitutional law

class actions

products liability

## QUESTIONS PRESENTED

1. Whether Solis adequately alleged a concrete economic injury sufficient to establish Article III standing under a benefit-of-the-bargain theory.
2. Whether Solis adequately alleged a concrete economic injury under an overpayment theory based on misrepresentation, omission, or a hidden defect.
3. Whether Solis adequately alleged a particularized injury by connecting the alleged PFAS contamination to the specific product unit she purchased.
4. Whether the amended complaint should be dismissed under Rule 12(b)(1) for lack of subject-matter jurisdiction and whether leave to amend should be granted.

## HOLDINGS

1. A plaintiff cannot establish Article III economic injury under a benefit-of-the-bargain theory for an allegedly unsafe consumer product when the plaintiff identifies no specific misrepresentation concerning the claimed benefit and the product labeling discloses that the alleged benefit was not part of the bargain. Solis therefore failed to establish standing under this theory.
2. An overpayment theory of Article III standing may be based on a false representation or actionable nondisclosure, but Solis failed to plead either because she identified no specific false representation that the product was PFAS-free and the label disclosed PTFE, the alleged PFAS ingredient.
3. The amended complaint did not establish standing under a hidden-defect theory because the product label disclosed PTFE and Solis alleged that the harmful qualities of PFAS were widely known.
4. A plaintiff alleging injury from an adulterated product must plead facts permitting an inference that the specific product purchased was affected; however, a formulaic allegation that the precise unit purchased contained PFAS is not required at the pleading stage if the complaint's product-wide allegations support that reasonable inference.
5. Because Solis failed to allege a concrete economic injury and therefore lacked Article III standing, the court dismissed the amended complaint without prejudice under Rule 12(b)(1), without reaching defendants' Rule 12(b)(6) arguments, and granted leave to file a second amended complaint.

## KEY QUOTATIONS

*“DISMISSES WITHOUT PREJUDICE the Amended Complaint for lack of subject-matter jurisdiction.”* (at 1)

*“Together, Birdsong and McGee stand for a simple legal premise: where a plaintiff seeks to allege an injury-in-fact arising from the purchase of a purportedly unsafe consumer item, he or she is precluded from doing so*

*based upon a “benefit of the bargain” theory where (1) there is no identifiable misrepresentation concerning the purported benefit of which the plaintiff was allegedly deprived and (2) the product’s labeling or packaging discloses the alleged benefit is not part of the bargain.” (at 8)*

*“That dismissal is WITHOUT PREJUDICE to Solis filing a corrective pleading that resolves the deficiencies delineated herein.” (at 22)*

## FACTUAL BACKGROUND

Solis purchased CoverGirl TruBlend Pressed Powder in California in December 2021 after reviewing the product label and statements on defendants' websites and investor materials describing their products as safe, sustainable, and suitable for sensitive skin. She alleged that testing of a sample revealed elevated organic fluorine indicative of PFAS and that PFAS are toxic and carcinogenic. The product label expressly listed PTFE, which Solis alleged is a type of PFAS, but she claimed defendants' representations and omissions caused her to believe the product was safe, sustainable, and PFAS-free. She did not allege that the specific unit she purchased had been tested.

## PROCEDURAL HISTORY

Solis filed the initial complaint on March 25, 2022. After defendants moved to dismiss, Solis filed an amended complaint instead of opposing the initial motion. The amended complaint asserted fifteen claims arising from the alleged marketing and sale of CoverGirl TruBlend Pressed Powder containing PFAS. Defendants then moved to dismiss under Rules 12(b)(1) and 12(b)(6); the court resolved the jurisdictional motion first, dismissed without prejudice for lack of standing, and permitted a second amended complaint.

## DISPOSITION

dismissed

## CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Safe Air for Everyone v. Meyer, 373 F.3d 1036, 1039 (9th Cir. 2004)
- Pride v. Correa, 719 F.3d 1130, 1133 (9th Cir. 2013)
- Knievel v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005)
- Thornhill Publishing Co. v. General Telephone & Electric, 594 F.2d 730, 733 (9th Cir. 1979)
- McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988)
- Savage v. Glendale Union High School, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)
- Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)
- Augustine v. United States, 704 F.2d 1074, 1078 (9th Cir. 1983)
- Maya v. Centex Corp., 658 F.3d 1060, 1068–69 (9th Cir. 2011)
- Equity Lifestyle Properties, Inc. v. County of San Luis Obispo, 548 F.3d 1184, 1189 n.10 (9th Cir. 2008)
- Toyota Landscaping Co. v. Southern California District Council of Laborers, 11 F.3d 114, 117 (9th Cir. 1993)

- Prather v. AT&T Inc., 996 F. Supp. 2d 861, 871 n.8 (N.D. Cal. 2013)
- Spokeo, Inc. v. Robins, 578 U.S. 330, 337–40 (2016)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–62 (1992)
- Warth v. Seldin, 422 U.S. 490, 518 (1975)
- Birdsong v. Apple, Inc., 590 F.3d 955, 956, 961–62 (9th Cir. 2009)
- McGee v. S-L Snacks Nat’l, 982 F.3d 700, 705–10 (9th Cir. 2020)
- In re Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Liability Litigation, 903 F.3d 278, 283 (3d Cir. 2018)
- Estrada v. Johnson & Johnson, No. 2:14-cv-1051-TLN-EFB, 2015 WL 1440466, at \*4–5 (E.D. Cal. Mar. 27, 2015)
- Hinojos v. Kohl’s Corp., 718 F.3d 1098, 1104 (9th Cir. 2013)
- Mazzo v. American Honda Motor Co., 666 F.3d 581, 595 (9th Cir. 2012)
- Zeiger v. WellPet LLC, 304 F. Supp. 3d 837, 842, 845–46 (N.D. Cal. 2018)
- Cheslow v. Ghirardelli Chocolate Co., 445 F. Supp. 3d 8, 20 (N.D. Cal. 2020)
- Baur v. Veneman, 352 F.3d 625, 636–37 (2d Cir. 2003)
- Meaunrit v. Pinnacle Foods Group, LLC, No. C 09-04555 CW, 2010 WL 1838715, at \*3 (N.D. Cal. May 5, 2010)
- Blackburn v. Champions Petfoods USA, Inc., No. 1:18-cv-0038, 2021 WL 9682169, at \*2 (S.D. Iowa Aug. 12, 2021)
- Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982)
- Flast v. Cohen, 392 U.S. 83, 99 (1968)
- Baker v. Carr, 369 U.S. 186, 205 (1962)
- Lee v. American National Insurance Co., 260 F.3d 997, 1005 (9th Cir. 2001)
- Wallace v. ConAgra Foods, Inc., 747 F.3d 1025, 1030 (8th Cir. 2014)
- In re Zurn Plumbing Products Liability Litigation, 644 F.3d 604, 616 (8th Cir. 2011)
- Lewis v. Casey, 518 U.S. 343, 357 (1996)
- Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 n.20 (1976)
- Doe v. Holly, 557 F.3d 1066, 1073 (9th Cir. 2009) (per curiam)
- Wolfe v. Stankman, 392 F.3d 358, 362 (9th Cir. 2004)
- Schloegel v. Edgewell Personal Care Co., No. 4:21-CV-0631-DGK, 2022 WL 808694, at \*1 (W.D. Mo. Mar. 16, 2022)
- Doss v. General Mills, Inc., No. 18-61924-CIV, 2019 WL 7946028, at \*2–3 (S.D. Fla. June 14, 2019), aff’d, 816 F. App’x 312 (11th Cir. 2020)
- Pels v. Keurig Dr Pepper, Inc., No. 19-CV-3052-SI, 2019 WL 5813422, at \*1 (N.D. Cal. Nov. 7, 2019)
- Rice-Sherman v. Big Heart Pet Brands, Inc., Case No. 19-cv-3613-WHO, 2020 WL 1245130, at \*7 (N.D. Cal. Mar. 16, 2020)

- Von Slomski v. Hain Celestial Group, Inc., No. SACV131757AGANX, 2014 WL 12771116, at \*5 (C.D. Cal. June 10, 2014)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 103 (1998)

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