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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY BUSO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HENKEL CORPORATION, a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. **'17CV1132 DMS MDD**

CLASS ACTION

COMPLAINT FOR DAMAGES AND INJUCTIVE RELIEF

JURY TRIAL DEMAND

INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.[1] That decision is heavily dependent on a product's packaging, and particularly the package dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight . . . . Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it's a better value."[2] This lawsuit charges Defendant with intentionally packaging its "Purex Crystals" product in opaque containers that contain approximately 30% empty space. Consumers, in reliance on the size of the containers, purchased the Purex Crystals product, which they would not have purchased had they known that the containers were substantially empty.

2. Anthony Buso ("Plaintiff"), individually and on behalf of all others similarly situated, bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful and deceptive actions of Henkel Corporation ("Defendant" or "Henkel") with respect to the packaging of its Purex Crystals product. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

3. Defendant sells the Purex Crystals product as "an in-wash fragrance booster, which provides freshness that lasts for weeks. Use a little or a lot, directly in the laundry! Safe for all loads including towels, activewear, and children's sleepwear."

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[1] http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-windown.html (citing the Ehrenberg-Bass Institute of Marketing Science's report "Shopping Takes Only Seconds…In-Store and Online").

[2] http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers).

On its website, Defendant states: "Purex® Crystals infuses your clothes with an extraordinary freshness that puts the finishing touch on your laundry and makes everyday a little more rewarding. With the exciting variety of fragrances Purex® Crystals offers, it's easy to find a fragrance to match every laundry occasion. Whether it's a relaxing freshness for your sheets or a more stimulating scent for you and your family's activewear, Purex® Crystals has you covered. Have fun and try them all!"[3]

4. Plaintiff purchased Defendant's Purex Crystals product on April 15, 2017, from a Wal-Mart store located in Poway, California, for approximately $3.20.

5. Plaintiff expected to receive a full container of the Purex Crystals product, which is packaged in non-transparent containers, as depicted below. Plaintiff was surprised and disappointed when he opened the Purex Crystals product to discover that the container had more than 30% empty space, or slack-fill. Had Plaintiff known about the slack-fill at the time of purchase, he would not have bought Defendant's product.

6. Defendant's conduct violates consumer protection and labeling laws.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(l)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. See 28 U.S.C. § 1332(d)(2).

8. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

9. The Court has personal jurisdiction over Defendant because its Purex Crystals products are advertised, marketed, distributed and sold through the State of California; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in the State of California; Defendant is authorized to do

[3] http://www.purex.com/products/fragrance-boosters/purex-crystals/. Accessed on May 30, 2017.

business in the State of California; and Defendant has sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial activity with the State of California.

10. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred within this judicial district, Defendant has marketed and sold the Purex Crystals products at issue in this action in this judicial district, and it conducts business within this judicial district. In addition, Plaintiff resides in this judicial district.

PARTIES

11. Plaintiff Anthony Buso is a citizen of the State of California and resides in Poway, California. Plaintiff purchased a Purex Crystals product for personal consumption during the last four years in Poway, California. Plaintiff purchased the Product in reliance on Defendant's packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff known the truth about Defendant's misrepresentations, he would not have purchased the Purex Crystals product.

12. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant Henkel Corporation is a Delaware corporation with its principal place of business located in Rocky Hill, Connecticut. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant, at all times relevant, conducted business in the State of California and within the Southern District of California.

13. The true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of

Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

14. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (Henkel Corporation and DOE Defendants will hereafter collectively be referred to as "Defendant").

FACTUAL ALLEGATIONS

California Law Prohibits Non-functional Slack-Fill

15. Many federal and state consumer protection and labeling laws prohibit deceptive packaging and labeling of products and commodities. In California, the Fair Packaging and Labeling Act ("CFPLA") "is designed to protect purchasers of any commodity within its provisions against deception or misrepresentation. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." (California Business & Professions Code § 12601.)

16. In this context, the CFPLA provides: "No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill." (California Business & Professions Code § 12606(b).) Section 12606(b) defines "nonfunctional slack fill" as "the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of [among other things] the following:

(1) Protection of the contents of the package.

(2) The requirements of machines used for enclosing the contents of the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information….

(5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product. ….

(6) An inability to increase the level of fill or to further reduce the size of the package….

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) The dimensions of the product or immediate product container are visible through the exterior packaging….

(9) The presence of any headspace within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

(10) The exterior packaging contains a product delivery or dosing device if the device is visible….

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components….

(12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores….

(13) The exterior packaging consists of single or multiunit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it

would otherwise be due to the inclusion of the sample or gift, if the presence of both products and the quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(15) The exterior packaging or immediate product container encloses computer hardware or software designed to serve a particular computer function…." (California Business & Professions Code § 12606(b)(1)-(15).)

17. None of the above safe-harbor provisions applies to the Purex Crystals product. Defendant intentionally incorporated non-functional slack-fill in its packaging of the Purex Crystals product in order to mislead consumers, including Plaintiff and Members of the Class.

Defendant's Product Contains Non Functional Slack-Fill

18. Defendant's Purex Crystals product is sold in non-transparent containers. The containers have significant slack-fill, as described below.

19. Approximately 30% of the interior of the Purex Crystals container, which concerns the product purchased by Plaintiff, is comprised of empty space, or non-functional slack fill.

[Attach photos showing full length of the product, and showing the interior of the product]

20. Judging from the sizes of the container, a reasonable consumer would expect them to be substantially filled with product. Consumers are misled into believing that they are purchasing substantially more Purex Crystals product than they receive.

21. There is no functional reason for including more than 30% slack-fill in the Purex Crystals product.

22. Plaintiff is informed and believes, and upon such information and belief alleges, that consumers have relied upon, and are continuing to rely upon, the size of the Purex Crystals product containers as the basis for making purchasing decisions. Consumers believe that the Purex Crystals product containers are substantially full because they cannot see the actual contents within the nontransparent container.

23. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant is selling and will continue to sell the Purex Crystals products using these blatantly deceptive and misleading slack-filled containers.

24. Defendant's packaging and advertising of the Purex Crystals products violate the CFPLA, as set forth above.

Plaintiff Relied on Defendant's Misleading and Deceptive Conduct and Were Injured as a Result

25. The types of misrepresentations made, as described herein, were considered by Plaintiff and Class Members (as would be considered by a reasonable consumer) when deciding to purchase the Purex Crystals product. Reasonable consumers, including Plaintiff and Class Members, attached importance to whether Defendant's Purex Crystals products were misbranded, i.e., not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

26. Plaintiff and the Class Members did not know, and had no reason to know, that the Purex Crystals product contained non-functional slack-fill.

27. Defendant's product packaging was a material factor in Plaintiff's and the Class Members' decisions to purchase the Purex Crystals product. Based on Defendant's product packaging, Plaintiff and the Class Members believed that they were getting more Purex Crystals product than was actually being sold. Had Plaintiff known Defendant's packaging was slack-filled, he would not have bought the slack-filled Purex Crystals product.

28. Plaintiff and the Class Members paid the full price of the Purex Crystals product and received less Purex Crystals product than they expected due to the non-functional slack-fill in the Purex Crystals products.

29. There is no practical reason for the non-functional slack-fill used to package the Purex Crystals products other than to mislead consumers as to the actual volume of the Purex Crystals products being purchased by consumers.

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30. As a result of Defendant's misrepresentations, Plaintiff and thousands of others throughout California purchased the Products. Plaintiff and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and the following class (collectively, the "Class" or "Classes"), defined as:

> **All California residents who made retail purchases of Purex Crystals products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period up to and including final judgment in this action.**

32. The proposed Class excludes current and former officers and directors of Defendant, Members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

33. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

34. The Purex Crystals products sold by Defendant suffer from virtually the same misleading product bottling, labeling and nonfunctional slack-fill.

35. Numerosity: This action has been brought and may properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the Class. Based on sales of the Purex Crystals products it is estimated that the Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of Members. The Members of the

Class are so numerous that joinder of all Members is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

36. Typicality: Plaintiff's claims are typical of the claims of the Members of the Class as all Members of the Class are similarly affected by Defendant's wrongful conduct, as detailed herein.

37. Adequacy: Plaintiff will fairly and adequately protect the interests of the Members of the Class in that he has no interests antagonistic to those of the other Members of the Class. Plaintiff has retained experienced and competent counsel.

38. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class Members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Members of the Class to individually seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action. If Class treatment of these claims were not available, Defendant would likely unfairly receive thousands of dollars or more in improper revenue.

39. Common Questions Predominate: Common questions of law and fact exist as to all Members of the Class and predominate over any questions solely affecting individual Members of the Class. Among the common questions of law and fact applicable to the Class are:

i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Purex Crystals products to Plaintiff, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;

ii. Whether Defendant's actions constitute violations of the CFPLA, California Business & Professions Code § 12601 *et seq*.;

iii. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of its Purex Crystals products;

iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of Purex Crystals products constituted an unfair, unlawful or fraudulent practice;

v. Whether Defendant's packaging of the Purex Crystals products constituted nonfunctional slack-fill;

vi. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;

vii. Whether the Members of the Class have sustained damages as a result of Defendant's wrongful conduct;

viii. The appropriate measure of damages and/or other relief; and

ix. Whether Defendant should be enjoined from continuing its unlawful practices.

40. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude his maintenance of this matter as a Class action.

41. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

42. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

43. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all Members of the Class, although certain Class Members are not parties to such actions.

44. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, et seq.

45. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

46. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code 1761(d).

47. Plaintiff and the Class Members are consumers who purchased the Purex Crystals product for personal, family or household purposes. Plaintiff and the Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff and the Class Members are not sophisticated experts with independent knowledge of corporate branding, labeling and packaging practices.

48. The Purex Crystals products that Plaintiff and other Class Members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

49. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

50. Defendant violated California law because the Purex Crystals products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill, and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

51. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "Misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Purex Crystals products have quantities they do not have.

52. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods as containing more product than they in fact contain.

53. Plaintiff and the Class Members are not sophisticated experts about corporate branding, labeling and packaging practices. Plaintiff and the Class acted reasonably when they purchased the Purex Crystals products based on their belief that Defendant's representations were true and lawful.

54. Plaintiff and the Class suffered injuries caused by Defendant because (a) they would not have purchased the Purex Crystals products on the same terms absent Defendant's illegal and misleading conduct as set forth herein; (b) they purchased the Purex Crystals products due to Defendant's misrepresentations and deceptive packaging in containers made, formed or filled as to be misleading and containing non-

functional slack-fill; and (c) the Purex Crystals products did not have the quantities as promised.

55. On or about April 19, 2017, prior to filing this action, Plaintiff sent a CLRA notice letter to Defendant which complies with California Civil Code 1782(a). Plaintiff sent Henkel Corporation, individually and on behalf of the proposed Class, a letter via Certified Mail, advising Defendant that it is in violation of the CLRA and demanding that it cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of the letter is attached hereto as Exhibit 1.

56. Wherefore, Plaintiff seeks injunctive relief for these violations of the CLRA.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,

California Business & Professions Code § 17200, et seq.

57. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

58. Plaintiff brings this claim individually and on behalf of the Members of the Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

59. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising…"

60. Defendant violated California law because the Purex Crystals products are packaged in containers made, formed or filled as to be misleading and that contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

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A. "Unlawful" Prong

61. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL by violating the CFPLA, California Business & Professions Code § 12601 *et seq*.

62. Specifically, Defendant violated section 12606 of the Business and Professions Code, in that Defendant packaged its Purex Crystals products in non-conforming type containers. Said non-conforming packages contained extra space by volume in the interior of the container. The extra space provided no benefit to the contents of the packaging and misled consumers. In addition, Defendant packaged its Purex Crystals products in containers made, formed, or filled as to be misleading to a potential customer as to the actual size and filling of the package with Defendant's Purex Crystals products.

B. "Unfair" Prong

63. Defendant's business practices, described herein, violated the "unfair" prong of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to consumers.

C. "Fraudulent" Prong

64. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiff and the Class to believe that the Purex Crystals products contained more content than they actually contain and that such packaging and labeling practices were lawful, true and not intended to deceive or mislead consumers.

65. Plaintiff and the Class Members are not sophisticated experts about the corporate branding, labeling, and packaging practices of the Purex Crystals products. Plaintiff and the Class acted reasonably when they purchased the Purex Crystals products based on their belief that Defendant's representations were true and lawful.

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66. Plaintiff and the Class lost money or property as a result of Defendant's UCL violations because (a) they would not have purchased the Purex Crystals products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price for the Purex Crystals products due to Defendant's misrepresentations; and (c) the Purex Crystals products did not have the quantities as represented.

67. The conduct of Defendant as set forth above demonstrates the necessity for granting injunctive relief restraining such and similar acts of unfair competition pursuant to California Business and Professions Code. Unless enjoined and restrained by order of the court, Defendant will retain the ability to, and may engage in, said acts of unfair competition, and misleading advertising. As a result, Plaintiff and the Class are entitled to injunctive and monetary relief.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,

California Business & Professions Code § 17500, et seq.

68. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

69. Plaintiff brings this claim individually and on behalf of the Members of the Class for Defendant's violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.

70. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state . . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

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71. Defendant engaged in a scheme of offering misbranded Purex Crystals products for sale to Plaintiff and the Class Members by way of packaging the Purex Crystals products in containers made, formed or filled as to be misleading and which contain nonfunctional slack-fill. Such practice misrepresented the content and quantity of the misbranded Purex Crystals products. Defendant's advertisements were made in California and come within the definition of advertising as contained in Bus. & Prof Code §§ 17500, et seq. in that the product packaging was intended as inducements to purchase Defendant's Purex Crystals products. Defendant knew its conduct was unauthorized, inaccurate, and misleading.

72. Defendant violated California law because the Purex Crystals products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

73. Defendant violated Section 17500, et seq. by misleading Plaintiff and the Class to believe that the Purex Crystals product packaging contains more Purex Crystals product than it in fact contains, as described herein.

74. Defendant knew or should have known, through the exercise of reasonable care that the Purex Crystals products were and continue to be misbranded, and that its representations about the quantities of the Purex Crystals products were untrue and misleading.

75. Plaintiff and the Class Members lost money or property as a result of Defendant's FAL violations because (a) they would not have purchased the Purex Crystals products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price for the Purex Crystals products due to Defendant's misrepresentations; and (c) the Purex Crystals products did not have the benefits, or quantities as promised, and as a result the class is entitled to monetary and injunctive relief.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendant as follows:

(A) For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as class representatives, and designating Plaintiff's counsel as counsel for the Class;

(B) For an Order declaring that Defendant's conduct violated the CLRA, Cal. Civ. Code § 1750, et seq., and awarding (i) injunctive relief, (ii) costs of suit, and (iii) reasonable attorneys' fees;

(C) For an Order declaring that Defendant's conduct violated California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., and California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq., and awarding (i) injunctive relief, (ii) actual damages, (iii) prejudgment and post judgment interest; (iv) exemplary and/or punitive damages pursuant to Cal. Civ. Code § 3294, (v) costs of suit, and (iv) reasonable attorneys' fees pursuant to, inter alia, Cal. Code of Civ. Proc § 1021.5;

(D) For compensatory 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, as pleaded;

(G) For injunctive relief as pleaded or as the Court may deem proper;

(H) For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit as pleaded; and

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(I) For such other and further relief as the Court deems just and proper.

Date: June 6, 2017

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: */s/Scott J. Ferrell*
Scott J. Ferrell
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Date: June 6, 2017

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: */s/Scott J. Ferrell*
Scott J. Ferrell
Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
ANTHONY BUSO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS
HENKEL CORPORATION, a Delaware corporation; and DOES 1 through 10, inclusive,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

'17CV1132 DMS MDD

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

(mxn)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
☐ 196 Franchise				☐ 864 SSID Title XVI	☒ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C § 1332(d)(l)(B)
Brief description of cause:
Class action complaint for damages and injunctive relief

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE
06/05/2017

SIGNATURE OF ATTORNEY OF RECORD
/s/Scott J. Ferrell

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1

PACIFIC TRIAL ATTORNEYS
A NATIONAL LITIGATION FIRM

April 19, 2017

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Henkel Corporation
Attention: Legal Department
c/o Gregory Gaglione (Registered Agent)
One Henkel Way
Rocky Hill, CT 06067

Re: Violations of California Civil Code § 1782 and Cal. Civ. Code § 1750 et seq.

Ladies and Gentlemen:

This law firm has been retained to prosecute a class action lawsuit against you for violation of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.* ("CLRA"). As relevant here, the CLRA prohibits unfair and unlawful methods of competition and unfair business practices. This includes packaging products in containers containing non-functional slack-fill or empty space.

As shown below, you have packaged your products in containers containing non-functional slack-fill or empty space. This amounts to a clear, ongoing, and unequivocal violation of the CLRA. Accordingly, you are liable to my client and to the putative class for substantial monetary damages. This letter serves as notice and demand for corrective action by Henkel Corporation ("Henkel") pursuant to the California Civil Code § 1782. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

1. **My Client Purchased Your Product Containing Non-Functional Slack-Fill.**

My client recently purchased an 18.0 oz. package of Purex Crystals, ("Product") that is packaged in an opaque container. Upon opening the package, my client learned that Product contained significant empty space or "slack-fill;" indeed, as shown in the attached picture, the package was approximately thirty percent (30%)

empty. Henkel intentionally packed its products in non-transparent containers with non-functional slack-fill; this constitutes an unfair and unlawful business practice that must be stopped. This conduct allows Henkel to increase its sales, charge a premium price for its product, and capture market share from its competitors.

2. My Client and Each Class Member Are Entitled to Statutory Minimum Damages of $1,000.00 Per Violation From You.

"The CLRA allows for restitutionary and injunctive relief, as well as compensatory and punitive damages and attorney fees." *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 923–924, 90 Cal. Rptr. 3d 225 (2009). Under the CLRA, "in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000)." Cal. Civ. Code § 1780(a)(1). Thus, if you are found liable for violations of the CLRA, at a minimum, the class would be entitled to damages of $1,000 for each violation. *See Pickman v. American Exp. Co.*, No. C 11-05326 WHA, 2012 WL 258842, at *2 (N.D. Cal. Jan. 27, 2012). In addition, even if our client and the putative class recover actual damages instead of statutory minimum damages, given the sheer number of purchasers of Henkel Products, the damages liability will surely be substantial. *Morales v. Conopco, Inc.*, No. 2:13-2213 WBS EFB, 2016 WL 6094504, at *5 (E.D. Cal. Oct. 18, 2016) (granting final approval of class action settlement totaling $3.25 million even though "Defendant's line of products only cost several dollars, and plaintiffs' analysis found the premium paid for a "Naturals" product was approximately sixty-eight cents per product.").

3. Conclusion

We respectfully request on behalf of our client and the class that, within thirty (30) days, Henkel: (1) cease and desist from continued sale of all Henkel Products containing non-functional slack-fill; (2) initiate corrective action; and (3) refund the purchase price of all misrepresented Henkel Products purchased by the class, plus reimbursement for interest. Please comply with this demand within thirty (30) days from receipt of this letter. If not, please be advised that we intend to file a class action lawsuit upon expiration of the aforesaid thirty (30) day period.

Additionally, this letter serves as notice to Henkel of its duty to preserve and retain all documents, tangible items, and electronically stored information that is potentially relevant to this matter.

PACIFIC TRIAL ATTORNEYS
A NATIONAL LITIGATION FIRM

If you believe that any of the assertions in this letter are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel and contact Pacific Trial Attorney's Managing Partner, David Reid, immediately. Mr. Reid can be reached by telephone in the office at (949) 706-6464 or by email at dreid@pacifictrialattorneys.com.

Sincerely,

Scott J. Ferrell, Esq.
For Pacific Trial Attorneys
A National Litigation Firm

SJF/hs


Freshness that Lasts for Weeks
Purex
Crystals
in-wash fragrance booster
FRESH MOUNTAIN BREEZE
CAUTION
ADVERTENCIA


Freshness that Lasts for Weeks
Purex
Crystals
Fresh Mountain Breeze

Parex Crystals Slack Fill

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Henkel Corporation
Attention: Legal Department
c/o Gregory Gaglione (Registered Agent)
One Henkel Way
Rocky Hill, CT 06067

9590 9402 1201 5246 3600 02

2. Article Number *(Transfer from service label)*

7015 1730 0001 0521 2225

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery 4/21/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR
21
2017

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt