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FILED
Superior Court Of California
County Of Los Angeles

JAN 31 2017

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAVID SPACONE, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

ELMER'S PRODUCTS, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendant.

Case No.: **BC 6 4 8 9 0 7**

CLASS ACTION COMPLAINT FOR:

- 1) Violations of California's Consumers Legal Remedies Act
- 2) Violations of Unfair Competition Law, California Business & Professions Code § 17500 *et seq.*
- 3) Violations of Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

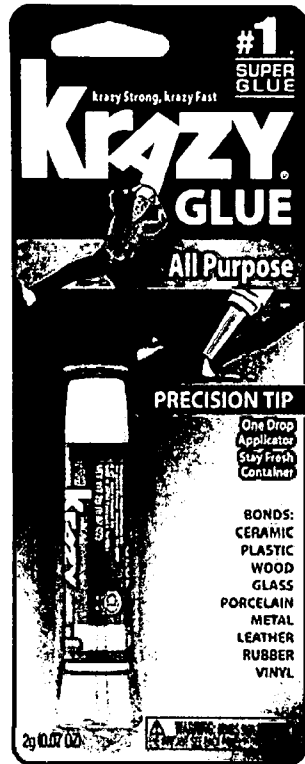
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CIT/CASE #: BC648907
 LEAD/DEF #:
 RECEIPT #: CCH195707059
 DATE PAID: 01/31/17 03:25 PM
 PAYMENT: \$1,435.00 \$10
 RECEIVED:
 CHECK: \$1,435.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$0.00

INTRODUCTION

1. Plaintiff David Spacone ("Plaintiff") brings this action on behalf of himself and on behalf of all others similarly situated, against Defendant Elmer's Products, Inc. ("Elmer's" or "Defendant"), based on Defendant's misleading business practices with respect to the packaging and sale of Krazy Glue® brand all-purpose adhesive that is sold in a "Stay Fresh Container" ("Krazy Glue" or the "Product").

2. At all relevant times, and as depicted in the photographs below, Defendant has packaged and sold the Krazy Glue in opaque packaging that conceals from consumers the amount of product actually contained therein. The Krazy Glue is sold fully enclosed in an opaque plastic container several times larger than the tube, which contains the glue, which is then sealed in a plastic half-shell affixed to cardboard, as depicted below. This packaging prevents the consumer from directly seeing or handling the product and leads the reasonable consumer to believe that the package contains significantly more product than it actually does.



3. Defendant's practice of enclosing a tiny tube of glue inside a much larger

opaque container creates non-functional slack-fill. The use of non-functional slack-fill allows Defendant to lower their costs by duping customers into thinking they are getting a better bargain than they actually receive. As a result, Defendant has realized sizable profits.

4. Plaintiff and others have reasonably relied on Defendant's deceptive packaging in purchasing the Krazy Glue. If Plaintiff and other consumers had known the actual amount of glue contained in the packaging, they would not have purchased the Krazy Glue or would have paid less for the Krazy Glue. Therefore, Plaintiff and other consumers have suffered injury-in-fact as a result of Defendant's deceptive practices, including, but not limited to, out-of-pocket costs incurred in purchasing the overvalued Krazy Glue.

PARTIES

PLAINTIFF DAVID SPACONE

5. Plaintiff David Spacone is a California citizen who resides in Los Angeles, California. During the class period alleged herein, Plaintiff purchased the Krazy Glue from a hardware store, True Value, located in Los Angeles. Plaintiff purchased the Krazy Glue in reliance on Defendant's packaging, which made it appear that he was purchasing Krazy Glue in the amount indicated by the size of the "Stay Fresh" container. Plaintiff thus reasonably believed he was buying more of the Krazy Glue than he actually received.

6. Plaintiff purchased the Krazy Glue primarily for personal, family, or household use. Elmer's manufactured, sold, distributed, advertised, marketed, and warranted the Krazy Glue.

7. If Plaintiff had known at the time of purchase the actual size of the tube of product contained in the packaging, he would not have purchased the Krazy Glue or would have paid less for it.

DEFENDANT

8. Defendant Elmer's Products, Inc. is a corporation organized and in existence under the laws of the State of Delaware and is registered to do business in the State of California. Elmer's Products, Inc.'s corporate headquarters and principal place of business are located at 460 Polaris Parkway, Westerville, OH, 43082. Elmer's Products, Inc. designs,

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tests, manufactures, markets, distributes, and sells Krazy Glue nationwide and in California.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of Elmer's at all relevant times.

11. At all relevant times, Defendant was and is engaged in the business of designing, testing, manufacturing, marketing, distributing, and selling products in Los Angeles County and throughout the United States of America.

JURISDICTION

12. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure § 410.10. Personal jurisdiction over Elmer's is proper because Elmer's has purposefully availed itself of the privilege of conducting business activities in California, including, but not limited to, testing, manufacturing, marketing, distributing, and/or selling Krazy Glue to Plaintiff and prospective class members.

13. This class action is brought pursuant to California Code of Civil Procedure § 382. Plaintiff is a California resident, as are all prospective class members. The monetary damages and restitution sought by Plaintiff and the prospective class members exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

VENUE

14. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395, 395.5 and California Civil Code § 1780 because Plaintiff resides in the County of Los Angeles, California, and the acts, omissions, and contractual performance alleged herein took place in the County of Los Angeles, California. Plaintiff's Declaration, as required under Cal. Civ. Code section 1780(d), which reflects that Defendant is doing business in Los Angeles

County, California, is filed concurrently as **Exhibit 1**.

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant has distributed, marketed, advertised, and sold Krazy Glue across California and the United States. Defendant sells the Krazy Glue at major retail and online outlets including, without limitation, Wal-Mart, Target, Staples, Walgreens, Rite Aid, CVS Pharmacy, Target, Amazon.com, CVS.com and Walmart.com.

16. Pursuant to California Business and Professions Code section 12606(b):

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. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of 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, such as those based on the regulations adopted by the United States Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.
- (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, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.
- (6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.
- (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.

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- (8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging excluding the bottom, accompanied by a clear and conspicuous disclosure that the representation is the actual size of the product or the immediate product container.
- (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, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.
- (11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.
- (12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size thereof prior to purchase.
- (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, if the particular computer function to be performed by the computer hardware or software is clearly and conspicuously disclosed on the exterior packaging.

17. Defendant's Crazy Glue packaging fits squarely within the foregoing definition of nonfunctional slack-fill under California law.

18. As depicted in the above photo, Crazy Glue is sold in a fully-enclosed opaque

container that does not allow consumers to even partially view the contents inside. Therefore, the packaging “does not allow the consumer to fully view its contents.” Cal. B&P Code § 12606(b).

19. Krazy Glue packaging is “filled to be misleading” due to the amount of slack fill it employs. The capacity of the opaque outer container is .37 ounces, which is more than five times the amount of glue in the inner tube. Per the packaging, the inner tube only contains .07 ounces of glue. The packaging does not indicate the capacity of the outer container, thus preventing a reasonable consumer from determining the striking difference in volume.

20. As set out in Cal. B&P Code § 12606(b), nonfunctional slack fill is defined as “the empty space in a package that is filled to substantially less than its capacity” and which does not fall under any of the safe harbor provisions. The amount of product that a consumer receives when purchasing Krazy Glue fills less than 20% of the capacity of the container it is packaged in.

21. Furthermore, the packaging does not fit within any of the safe harbor provisions listed in Cal. B&P Code § 12606(b):

- (1) Pursuant to § 12606(b)(1), the slack fill does not protect the contents of the packaging, as the product is not fragile or breakable;
- (2) Pursuant to § 12606(b)(2), there is no reason that machines used for enclosing the contents of the package would require an outer container which can hold five times more product than it actually does;
- (3) Pursuant to § 12606(b)(3), the slack fill is not necessary to accommodate product settling, as glue is not the sort of product that “settles”;
- (4) Pursuant to § 12606(b)(4), the outer container does not need to be larger to accommodate necessary labeling information, as the much-smaller inner tube contains the same information as outer tube;
- (5) Pursuant to § 12606(b)(5), the outer container is not decorative or representational, and does not have a value that is both significant in

- proportion to its value and independent of its function to hold the product;
- (6) Pursuant to § 12606(b)(6), the outer packaging is not needed to prevent theft or accommodate required labeling or tamper-resistant devices;
 - (7) Pursuant to § 12606(b)(7), the outer container does not bear a reasonable relationship to the actual amount of product contained inside, and the amount of the product therein is not visible to the consumer at the point of sale;
 - (8) Pursuant to § 12606(b)(8), neither the dimensions of the immediate product container or the product are visible through the exterior packaging, and the size of the immediate product container is not clearly and conspicuously depicted on the exterior packaging;
 - (9) Pursuant to § 12606(b)(9), the slack fill is not necessary to facilitate mixing, shaking, or dispensing of the product;
 - (10) Pursuant to § 12606(b)(10), the outer container is not a delivery or dosing device for the product;
 - (11) Pursuant to § 12606(b)(11), the outer container is not a kit or system designed to product a result not dependant on the quantity of the contents;
 - (12) Pursuant to § 12606(b)(12), the product is not routinely displayed outside of its packaging such that consumers can see the actual, immediate container of the product being sold prior to purchase;
 - (13) Pursuant to § 12606(b)(13), the exterior packaging is no holiday or gift packaging;
 - (14) Pursuant to § 12606(b)(14), the packaging does not contain a free sample or gift which necessitates larger packaging; and
 - (15) Pursuant to § 12606(b)(15), the packaging does not contain computer hardware or software.

22. Defendant's packaging is misleading to reasonable consumers, including Plaintiff and class members, and serves only to maximize Defendant's profits.

23. Defendant knows, or should know, that consumers, like Plaintiff and other Class Members, reasonably rely on the size and style of their packaging in purchasing Crazy Glue, and would reasonably believe that the packaging contains much more glue than it actually does.

24. In reasonable reliance on the size and style of their packaging, Plaintiff and Class Members purchased Crazy Glue.

25. Plaintiff and Class Members do not know, did not know, and have no reason to know, that the Crazy Glue packaging contains a significant amount of empty space, because the containers are opaque with no view of the contents inside, at the time of purchase. A reasonable consumer cannot accurately determine the fill of the Products by shaking or squeezing the packaging, and is certainly not expected to do so prior to purchasing the Products.

26. To this day, Defendants continue to sell Crazy Glue in deceptive packaging, without disclosing the true nature of the contents therein. Because the Crazy Glue packaging does not contain the amount of product reasonably expected by Plaintiff and Class Members, Defendant's uniform practice of filling and packaging Crazy Glue in the foregoing manner was and continues to be misleading and deceptive, and cheats consumers.

27. Each consumer has been exposed to the same or substantially similar deceptive practice, with the same misleading size and style of packaging, containing approximately 80% nonfunctional slack fill.

28. Plaintiff and other consumers have paid an unlawful premium for the Product. If Plaintiff and Class Members knew how little product they were getting, Plaintiff and Class Members would not have purchased the Crazy Glue or would have paid less for it. Therefore, Plaintiff and other consumers purchasing the Product suffered injury in fact and lost money as a result of Defendant's false, unfair, and fraudulent practices, as described herein.

29. As a result of their reliance on Defendant's representations, consumers have suffered an ascertainable loss of money, including, but not limited to, out of pocket costs incurred in purchasing Crazy Glue, which Plaintiff and other consumers have paid an

unlawful premium for. Specifically, they have paid for an amount of product that they expected but never received. Plaintiff and other consumers would have paid significantly less for Krazy Glue had they known that the package only contained 20% of the product that it had the capacity to hold. In the alternative, Plaintiff and other consumers would not have purchased Krazy Glue at all had they known that the package only contained 20% of the product that it had the capacity to hold. Therefore, Plaintiff and Class Members suffered injury-in-fact and lost money as a result of Defendant's false, unfair, and fraudulent practices, as described herein.

30. Further, as a result of its deceptive marketing and unfair competition with other similar manufacturers and brands, Defendant realized sizable profits.

31. As a result of its misleading business practice, and the harm caused to Plaintiff and Class Members, Defendant should be enjoined from using this deceptive packaging, and should be required to pay for all damages caused to Plaintiff and Class Members.

CLASS ALLEGATIONS

32. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated and seeks class certification under California Code of Civil Procedure section 382.

33. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

34. Plaintiff's proposed Class and Sub Class(es) are defined as:

Nationwide Class: All individuals in the United States who purchased the .07-oz. size of Krazy Glue All Purpose Adhesive packaged in .37-oz. outer containers or substantially similar packaging.

California Sub-Class: All members of the Nationwide Class who reside in the State of California.

CLRA Sub-Class: All members of the California Sub-Class who are "consumers" within the meaning of California Civil Code § 1761(d).

35. Members of the Class and California Subclass will collectively be referred to as "Class Members." Plaintiffs reserve the right to redefine the above Class and Sub-Classes and

add additional Sub-Classes as appropriate based on investigation, discovery, and the specific theories of liability.

36. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

37. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control.

38. Typicality: Plaintiff's claims are typical of the claims of the Class in that Plaintiff, like all Class Members, was exposed to Defendant's misleading packaging, purchased the Product relying on the misleading packaging, and suffered losses as a result of such purchases. The representative Plaintiff, like all Class Members, has been damaged by Defendant's misconduct in that they incurred expenses due to their reliance on Defendant's deceptive packaging, as described throughout this complaint. Furthermore, the factual bases of Defendant's misconduct are common to all Class Members and represent a common thread resulting in injury to all Class Members.

39. Adequacy: Plaintiff is an adequate representative of the Classes because his interests do not conflict with the interests of the members of the Classes he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by the Plaintiff and his counsel.

40. Commonality: Common questions of law and fact exist as to Plaintiff and the Class Members that predominate over any question affecting only individual Class Members. Common legal and factual issues include, but are not limited to, whether the Product's packaging contains nonfunctional slack fill, is misleading to the consumer, and therefore violates various consumer protection statutes.

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

FIRST CAUSE OF ACTION

(Violation of California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)

42. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

43. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the CLRA Sub-Class.

44. Defendant is a "person" as defined by California Civil Code § 1761(c).

45. Plaintiff and CLRA Sub-Class Members are "consumers" within the meaning of California Civil Code § 1761(d) because they bought Krazy Glue for personal, family, or household purposes.

46. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have" By packaging Krazy Glue in its current misleading packages, Defendant has represented and continues to represent that the Product has quantities which it does not have. Therefore, Defendant violates § 1770(a)(5) of the CLRA.

47. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” By deceitfully packaging Krazy Glue in a container with significantly greater volume than the product contained therein, and then intentionally selling the Product in a manner that does not meet consumer expectations as to the quantity of glue contained in the packaging, Defendant has violated section 1770(a)(9) of the CLRA.

48. At all relevant times, Defendant knew or reasonably should have known that the Krazy Glue packaging contained a significant amount of nonfunctional slack fill, and that Plaintiff and other members of the CLRA Sub-Class would reasonably and justifiably rely on the size and style of the package in purchasing the Product.

49. Plaintiff and members of the CLRA Sub-Class have reasonably and justifiably relied on Defendant’s misleading and fraudulent conduct when purchasing Krazy Glue. Moreover, Defendant’s fraudulent and misleading conduct is material in that a reasonable consumer would have considered the amount of product contained in the packaging to be important in deciding whether to purchase Krazy Glue or pay less. Therefore, reliance on such conduct as a material reason for the decision to purchase the Product may be presumed or inferred for Plaintiff and members of the CLRA Sub-Class.

50. Plaintiff and members of the CLRA Sub-Class have suffered and continue to suffer injuries caused by Defendant, because they would not have purchased the Product, or would have paid significantly less for the Product, had they know that Defendant’s conduct was misleading and fraudulent.

51. As a direct and proximate result of Defendant’s unfair methods of competition and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

52. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the CLRA Sub-Class seek damages, restitution, declaratory and injunctive relief, and all other remedies the Court deems appropriate for Defendant’s violations of the CLRA. Plaintiff seeks to enjoin Defendant from use of deceptive nonfunctional slack fill in its products.

53. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant

to California Civil Code § 1782(a). If Defendant fails to provide appropriate relief for its violations of the CLRA within 30 days, Plaintiff will seek monetary, compensatory, and punitive damages, in addition to injunctive and equitable relief.

SECOND CAUSE OF ACTION

(Violation of California Business & Professions Code § 17500 *et seq.*)

54. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

55. Plaintiff brings this cause of action on behalf of himself and on behalf of the Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

56. California Business & Professions Code § 17500 prohibits unfair, deceptive, untrue, and misleading advertising in connection with the disposal of personal property (among other things), including, without limitation, false statements as to the use, worth, benefits, or characteristics of the property.

57. Defendant has represented and continues to represent to the public, including Plaintiff and Class Members, through its deceptive packaging, that more product is contained therein than actually is. Defendant's representation is misleading because the packing only contains 20% of the amount of product compared to what the packaging could potentially hold. Defendant made such untrue or misleading advertisements with the intent to dispose of said merchandise.

58. Defendant knew, or in the exercise of reasonable care should have known, that these representations were misleading and deceptive, and that such representations continue to be misleading.

59. As a result of their reliance on Defendant's misrepresentations, Class Members suffered an ascertainable loss of money, property, and/or value of the product.

60. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

61. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business & Professions Code,

Plaintiff and Class Members are entitled to an order of this Court enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any money paid for Krazy Glue as a result of the wrongful conduct of Defendant.

THIRD CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200 *et seq.*)

62. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

63. Plaintiff brings this cause of action on behalf of himself and on behalf of the Nationwide Class, or in the alternative, on behalf of himself and on behalf of the California Sub-Class.

64. As a result of their reliance on Defendant's misrepresentations and omissions, Class Members suffered an ascertainable loss of money, property, and/or value of their Krazy Glue.

65. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

66. Under the UCL, a business act or practice is "unlawful" if it violates any established state or federal law.

67. Defendant's false and misleading advertising of Krazy Glue therefore was and continues to be "unlawful" because it violates Cal. B&P Code § 12606(b), because it contains unlawful nonfunctional slack fill as detailed herein.

68. Furthermore, Defendant's acts, conduct and practices also constituted violations of California's Consumers Legal Remedies Act; and violations of California's False Advertising Law.

69. By its conduct, Defendant has engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

70. Defendant's unfair or deceptive acts or practices occurred repeatedly in

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Defendant's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

71. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

72. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business & Professions Code.

REQUEST FOR JURY TRIAL

Plaintiff requests trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself, and all others similarly situated, requests the Court to enter judgment against Defendant, as follows:

1. An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
2. An order enjoining Defendant from further deceptive advertising, sales, and other business practices with respect to its Krazy Glue packaging;
3. A declaration requiring Defendant to comply with the various provisions of California's False Advertising Law and CLRA alleged herein and to make all the required representations;
4. An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
5. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of Krazy Glue, or make full restitution to Plaintiff and Class Members;
6. An award of attorneys' fees and costs, as allowed by law;
7. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;

8. An award of pre-judgment and post-judgment interest, as provided by law;
9. Leave to amend the Complaint to conform to the evidence produced at trial; and
10. Such other relief as may be appropriate under the circumstances.

Dated: January 31, 2017

Respectfully submitted,

Capstone Law APC

By: /s/ Lee A. Cirsch

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Robert K. Friedl
Trisha K. Monesi

Attorneys for Plaintiff David Spacone

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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID SPACONE, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

ELMER'S PRODUCTS, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendant.

Case No.:

**DECLARATION OF DAVID SPACONE IN
SUPPORT OF VENUE FOR CLASS
ACTION COMPLAINT PURSUANT TO
CIVIL CODE SECTION 1780(d)**

01/31/2017

1 **DECLARATION OF DAVID SPACONE**

2 I, DAVID SPACONE, declare under penalty of perjury as follows:

3 1. I make this declaration based upon my personal knowledge except as to those
4 matters stated herein that are based upon information and belief, and as to those matters I
5 believe them to be true. I am over the age of eighteen, a citizen of the State of California, and
6 a Plaintiff in this action.

7 2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted
8 in support of Plaintiff's Selection of Venue for the Trial of Plaintiff's Cause of Action
9 alleging violation of California's Consumers Legal Remedies Act.

10 3. I reside in Hollywood, California, which is in the County of Los Angeles.

11 4. I purchased Elmer's Krazy Glue in or around January 2017 from True Value
12 hardware store, which is located in the County of Los Angeles and is authorized to sell
13 Elmer's products.

14 5. I am informed and believe that Defendant Elmer's Products, Inc. ("Defendant")
15 is a Delaware corporation organized and existing under the laws of the State of Delaware, and
16 registered to conduct business in California. Defendant Elmer's Products, Inc. corporate
17 headquarters are located at 460 Polaris Parkway, Westerville, OH 43082.

18 6. On information and belief, Defendant designs, tests, manufactures, markets,
19 distributes, and/or sells Krazy Glue, which is at issue in Plaintiff's Complaint, filed
20 concurrently herewith, in Los Angeles County and throughout the United States of America.

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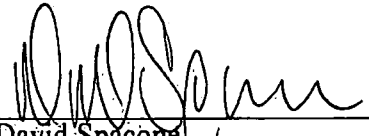
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7. The transactions described above form the basis of this action, or a substantial portion thereof, and occurred in the County of Los Angeles. On information and belief, Defendant conducts business in Los Angeles County, California, including, but not limited to, marketing, distributing, and/or selling its products to Class Members. Accordingly, Los Angeles County is a proper place for trial of this action.

8. I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed January 31, 2017 in Hollywood, California.



David Spacone

01/31/2017

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAVID SPACONE, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

ELMER'S PRODUCTS, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

- 1) Violations of California's Consumers
Legal Remedies Act
- 2) Violations of Unfair Competition Law,
California Business & Professions
Code § 17500 *et seq.*
- 3) Violations of Unfair Competition Law,
California Business & Professions
Code § 17200 *et seq.*

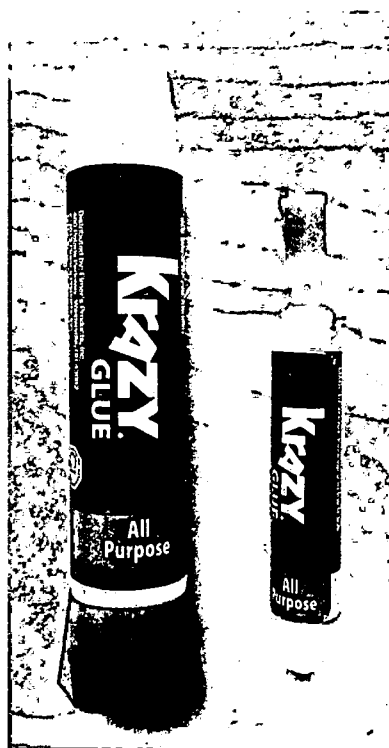
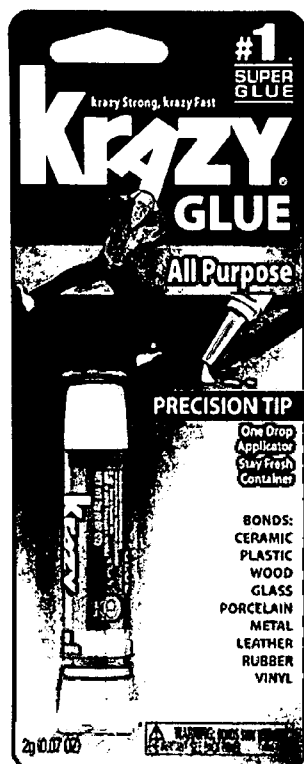
DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiff David Spacone (“Plaintiff”) brings this action on behalf of himself and on behalf of all others similarly situated, against Defendant Elmer’s Products, Inc. (“Elmer’s” or “Defendant”), based on Defendant’s misleading business practices with respect to the packaging and sale of Krazy Glue® brand all-purpose adhesive that is sold in a “Stay Fresh Container” (“Krazy Glue” or the “Product”).

2. At all relevant times, and as depicted in the photographs below, Defendant has packaged and sold the Krazy Glue in opaque packaging that conceals from consumers the amount of product actually contained therein. The Krazy Glue is sold fully enclosed in an opaque plastic container several times larger than the tube, which contains the glue, which is then sealed in a plastic half-shell affixed to cardboard, as depicted below. This packaging prevents the consumer from directly seeing or handling the product and leads the reasonable consumer to believe that the package contains significantly more product than it actually does.



3. Defendant’s practice of enclosing a tiny tube of glue inside a much larger

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opaque container creates non-functional slack-fill. The use of non-functional slack-fill allows Defendant to lower their costs by duping customers into thinking they are getting a better bargain than they actually receive. As a result, Defendant has realized sizable profits.

4. Plaintiff and others have reasonably relied on Defendant's deceptive packaging in purchasing the Krazy Glue. If Plaintiff and other consumers had known the actual amount of glue contained in the packaging, they would not have purchased the Krazy Glue or would have paid less for the Krazy Glue. Therefore, Plaintiff and other consumers have suffered injury-in-fact as a result of Defendant's deceptive practices, including, but not limited to, out-of-pocket costs incurred in purchasing the overvalued Krazy Glue.

PARTIES

PLAINTIFF DAVID SPACONE

5. Plaintiff David Spacone is a California citizen who resides in Los Angeles, California. During the class period alleged herein, Plaintiff purchased the Krazy Glue from a hardware store, True Value, located in Los Angeles. Plaintiff purchased the Krazy Glue in reliance on Defendant's packaging, which made it appear that he was purchasing Krazy Glue in the amount indicated by the size of the "Stay Fresh" container. Plaintiff thus reasonably believed he was buying more of the Krazy Glue than he actually received.

6. Plaintiff purchased the Krazy Glue primarily for personal, family, or household use. Elmer's manufactured, sold, distributed, advertised, marketed, and warranted the Krazy Glue.

7. If Plaintiff had known at the time of purchase the actual size of the tube of product contained in the packaging, he would not have purchased the Krazy Glue or would have paid less for it.

DEFENDANT

8. Defendant Elmer's Products, Inc. is a corporation organized and in existence under the laws of the State of Delaware and is registered to do business in the State of California. Elmer's Products, Inc.'s corporate headquarters and principal place of business are located at 460 Polaris Parkway, Westerville, OH, 43082. Elmer's Products, Inc. designs,

tests, manufactures, markets, distributes, and sells Krazy Glue nationwide and in California.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of Elmer's at all relevant times.

11. At all relevant times, Defendant was and is engaged in the business of designing, testing, manufacturing, marketing, distributing, and selling products in Los Angeles County and throughout the United States of America.

JURISDICTION

12. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure § 410.10. Personal jurisdiction over Elmer's is proper because Elmer's has purposefully availed itself of the privilege of conducting business activities in California, including, but not limited to, testing, manufacturing, marketing, distributing, and/or selling Krazy Glue to Plaintiff and prospective class members.

13. This class action is brought pursuant to California Code of Civil Procedure § 382. Plaintiff is a California resident, as are all prospective class members. The monetary damages and restitution sought by Plaintiff and the prospective class members exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

VENUE

14. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395, 395.5 and California Civil Code § 1780 because Plaintiff resides in the County of Los Angeles, California, and the acts, omissions, and contractual performance alleged herein took place in the County of Los Angeles, California. Plaintiff's Declaration, as required under Cal. Civ. Code section 1780(d), which reflects that Defendant is doing business in Los Angeles

County, California, is filed concurrently as **Exhibit 1**.

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant has distributed, marketed, advertised, and sold Krazy Glue across California and the United States. Defendant sells the Krazy Glue at major retail and online outlets including, without limitation, Wal-Mart, Target, Staples, Walgreens, Rite Aid, CVS Pharmacy, Target, Amazon.com, CVS.com and Walmart.com.

16. Pursuant to California Business and Professions Code section 12606(b):

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. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of 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, such as those based on the regulations adopted by the United States Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.
- (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, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.
- (6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.
- (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.

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- (8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging excluding the bottom, accompanied by a clear and conspicuous disclosure that the representation is the actual size of the product or the immediate product container.
- (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, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.
- (11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.
- (12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size thereof prior to purchase.
- (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, if the particular computer function to be performed by the computer hardware or software is clearly and conspicuously disclosed on the exterior packaging.

17. Defendant's Krazy Glue packaging fits squarely within the foregoing definition of nonfunctional slack-fill under California law.

18. As depicted in the above photo, Krazy Glue is sold in a fully-enclosed opaque

container that does not allow consumers to even partially view the contents inside. Therefore, the packaging “does not allow the consumer to fully view its contents.” Cal. B&P Code § 12606(b).

19. Krazy Glue packaging is “filled to be misleading” due to the amount of slack fill it employs. The capacity of the opaque outer container is .37 ounces, which is more than five times the amount of glue in the inner tube. Per the packaging, the inner tube only contains .07 ounces of glue. The packaging does not indicate the capacity of the outer container, thus preventing a reasonable consumer from determining the striking difference in volume.

20. As set out in Cal. B&P Code § 12606(b), nonfunctional slack fill is defined as “the empty space in a package that is filled to substantially less than its capacity” and which does not fall under any of the safe harbor provisions. The amount of product that a consumer receives when purchasing Krazy Glue fills less than 20% of the capacity of the container it is packaged in.

21. Furthermore, the packaging does not fit within any of the safe harbor provisions listed in Cal. B&P Code § 12606(b):

- (1) Pursuant to § 12606(b)(1), the slack fill does not protect the contents of the packaging, as the product is not fragile or breakable;
- (2) Pursuant to § 12606(b)(2), there is no reason that machines used for enclosing the contents of the package would require an outer container which can hold five times more product than it actually does;
- (3) Pursuant to § 12606(b)(3), the slack fill is not necessary to accommodate product settling, as glue is not the sort of product that “settles”;
- (4) Pursuant to § 12606(b)(4), the outer container does not need to be larger to accommodate necessary labeling information, as the much-smaller inner tube contains the same information as outer tube;
- (5) Pursuant to § 12606(b)(5), the outer container is not decorative or representational, and does not have a value that is both significant in

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- proportion to its value and independent of its function to hold the product;
- (6) Pursuant to § 12606(b)(6), the outer packaging is not needed to prevent theft or accommodate required labeling or tamper-resistant devices;
 - (7) Pursuant to § 12606(b)(7), the outer container does not bear a reasonable relationship to the actual amount of product contained inside, and the amount of the product therein is not visible to the consumer at the point of sale;
 - (8) Pursuant to § 12606(b)(8), neither the dimensions of the immediate product container or the product are visible through the exterior packaging, and the size of the immediate product container is not clearly and conspicuously depicted on the exterior packaging;
 - (9) Pursuant to § 12606(b)(9), the slack fill is not necessary to facilitate mixing, shaking, or dispensing of the product;
 - (10) Pursuant to § 12606(b)(10), the outer container is not a delivery or dosing device for the product;
 - (11) Pursuant to § 12606(b)(11), the outer container is not a kit or system designed to product a result not dependant on the quantity of the contents;
 - (12) Pursuant to § 12606(b)(12), the product is not routinely displayed outside of its packaging such that consumers can see the actual, immediate container of the product being sold prior to purchase;
 - (13) Pursuant to § 12606(b)(13), the exterior packaging is no holiday or gift packaging;
 - (14) Pursuant to § 12606(b)(14), the packaging does not contain a free sample or gift which necessitates larger packaging; and
 - (15) Pursuant to § 12606(b)(15), the packaging does not contain computer hardware or software.

22. Defendant's packaging is misleading to reasonable consumers, including Plaintiff and class members, and serves only to maximize Defendant's profits.

23. Defendant knows, or should know, that consumers, like Plaintiff and other Class Members, reasonably rely on the size and style of their packaging in purchasing Krazy Glue, and would reasonably believe that the packaging contains much more glue than it actually does.

24. In reasonable reliance on the size and style of their packaging, Plaintiff and Class Members purchased Krazy Glue.

25. Plaintiff and Class Members do not know, did not know, and have no reason to know, that the Krazy Glue packaging contains a significant amount of empty space, because the containers are opaque with no view of the contents inside, at the time of purchase. A reasonable consumer cannot accurately determine the fill of the Products by shaking or squeezing the packaging, and is certainly not expected to do so prior to purchasing the Products.

26. To this day, Defendants continue to sell Krazy Glue in deceptive packaging, without disclosing the true nature of the contents therein. Because the Krazy Glue packaging does not contain the amount of product reasonably expected by Plaintiff and Class Members, Defendant's uniform practice of filling and packaging Krazy Glue in the foregoing manner was and continues to be misleading and deceptive, and cheats consumers.

27. Each consumer has been exposed to the same or substantially similar deceptive practice, with the same misleading size and style of packaging, containing approximately 80% nonfunctional slack fill.

28. Plaintiff and other consumers have paid an unlawful premium for the Product. If Plaintiff and Class Members knew how little product they were getting, Plaintiff and Class Members would not have purchased the Krazy Glue or would have paid less for it. Therefore, Plaintiff and other consumers purchasing the Product suffered injury in fact and lost money as a result of Defendant's false, unfair, and fraudulent practices, as described herein.

29. As a result of their reliance on Defendant's representations, consumers have suffered an ascertainable loss of money, including, but not limited to, out of pocket costs incurred in purchasing Krazy Glue, which Plaintiff and other consumers have paid an

unlawful premium for. Specifically, they have paid for an amount of product that they expected but never received. Plaintiff and other consumers would have paid significantly less for Krazy Glue had they known that the package only contained 20% of the product that it had the capacity to hold. In the alternative, Plaintiff and other consumers would not have purchased Krazy Glue at all had they known that the package only contained 20% of the product that it had the capacity to hold. Therefore, Plaintiff and Class Members suffered injury-in-fact and lost money as a result of Defendant's false, unfair, and fraudulent practices, as described herein.

30. Further, as a result of its deceptive marketing and unfair competition with other similar manufacturers and brands, Defendant realized sizable profits.

31. As a result of its misleading business practice, and the harm caused to Plaintiff and Class Members, Defendant should be enjoined from using this deceptive packaging, and should be required to pay for all damages caused to Plaintiff and Class Members.

CLASS ALLEGATIONS

32. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated and seeks class certification under California Code of Civil Procedure section 382.

33. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

34. Plaintiff's proposed Class and Sub Class(es) are defined as:

Nationwide Class: All individuals in the United States who purchased the .07-oz. size of Krazy Glue All Purpose Adhesive packaged in .37-oz. outer containers or substantially similar packaging.

California Sub-Class: All members of the Nationwide Class who reside in the State of California.

CLRA Sub-Class: All members of the California Sub-Class who are "consumers" within the meaning of California Civil Code § 1761(d).

35. Members of the Class and California Subclass will collectively be referred to as "Class Members." Plaintiffs reserve the right to redefine the above Class and Sub-Classes and

add additional Sub-Classes as appropriate based on investigation, discovery, and the specific theories of liability.

36. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

37. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control.

38. Typicality: Plaintiff's claims are typical of the claims of the Class in that Plaintiff, like all Class Members, was exposed to Defendant's misleading packaging, purchased the Product relying on the misleading packaging, and suffered losses as a result of such purchases. The representative Plaintiff, like all Class Members, has been damaged by Defendant's misconduct in that they incurred expenses due to their reliance on Defendant's deceptive packaging, as described throughout this complaint. Furthermore, the factual bases of Defendant's misconduct are common to all Class Members and represent a common thread resulting in injury to all Class Members.

39. Adequacy: Plaintiff is an adequate representative of the Classes because his interests do not conflict with the interests of the members of the Classes he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by the Plaintiff and his counsel.

40. Commonality: Common questions of law and fact exist as to Plaintiff and the Class Members that predominate over any question affecting only individual Class Members. Common legal and factual issues include, but are not limited to, whether the Product's packaging contains nonfunctional slack fill, is misleading to the consumer, and therefore violates various consumer protection statutes.

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

FIRST CAUSE OF ACTION

(Violation of California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)

42. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

43. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the CLRA Sub-Class.

44. Defendant is a "person" as defined by California Civil Code § 1761(c).

45. Plaintiff and CLRA Sub-Class Members are "consumers" within the meaning of California Civil Code § 1761(d) because they bought Krazy Glue for personal, family, or household purposes.

46. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have" By packaging Krazy Glue in its current misleading packages, Defendant has represented and continues to represent that the Product has quantities which it does not have. Therefore, Defendant violates § 1770(a)(5) of the CLRA.

47. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” By deceitfully packaging Crazy Glue in a container with significantly greater volume than the product contained therein, and then intentionally selling the Product in a manner that does not meet consumer expectations as to the quantity of glue contained in the packaging, Defendant has violated section 1770(a)(9) of the CLRA.

48. At all relevant times, Defendant knew or reasonably should have known that the Crazy Glue packaging contained a significant amount of nonfunctional slack fill, and that Plaintiff and other members of the CLRA Sub-Class would reasonably and justifiably rely on the size and style of the package in purchasing the Product.

49. Plaintiff and members of the CLRA Sub-Class have reasonably and justifiably relied on Defendant’s misleading and fraudulent conduct when purchasing Crazy Glue. Moreover, Defendant’s fraudulent and misleading conduct is material in that a reasonable consumer would have considered the amount of product contained in the packaging to be important in deciding whether to purchase Crazy Glue or pay less. Therefore, reliance on such conduct as a material reason for the decision to purchase the Product may be presumed or inferred for Plaintiff and members of the CLRA Sub-Class.

50. Plaintiff and members of the CLRA Sub-Class have suffered and continue to suffer injuries caused by Defendant, because they would not have purchased the Product, or would have paid significantly less for the Product, had they know that Defendant’s conduct was misleading and fraudulent.

51. As a direct and proximate result of Defendant’s unfair methods of competition and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

52. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the CLRA Sub-Class seek damages, restitution, declaratory and injunctive relief, and all other remedies the Court deems appropriate for Defendant’s violations of the CLRA. Plaintiff seeks to enjoin Defendant from use of deceptive nonfunctional slack fill in its products.

53. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant

to California Civil Code § 1782(a). If Defendant fails to provide appropriate relief for its violations of the CLRA within 30 days, Plaintiff will seek monetary, compensatory, and punitive damages, in addition to injunctive and equitable relief.

SECOND CAUSE OF ACTION

(Violation of California Business & Professions Code § 17500 *et seq.*)

54. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

55. Plaintiff brings this cause of action on behalf of himself and on behalf of the Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

56. California Business & Professions Code § 17500 prohibits unfair, deceptive, untrue, and misleading advertising in connection with the disposal of personal property (among other things), including, without limitation, false statements as to the use, worth, benefits, or characteristics of the property.

57. Defendant has represented and continues to represent to the public, including Plaintiff and Class Members, through its deceptive packaging, that more product is contained therein than actually is. Defendant's representation is misleading because the packing only contains 20% of the amount of product compared to what the packaging could potentially hold. Defendant made such untrue or misleading advertisements with the intent to dispose of said merchandise.

58. Defendant knew, or in the exercise of reasonable care should have known, that these representations were misleading and deceptive, and that such representations continue to be misleading.

59. As a result of their reliance on Defendant's misrepresentations, Class Members suffered an ascertainable loss of money, property, and/or value of the product.

60. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

61. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business & Professions Code,

Plaintiff and Class Members are entitled to an order of this Court enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any money paid for Krazy Glue as a result of the wrongful conduct of Defendant.

THIRD CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200 *et seq.*)

62. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

63. Plaintiff brings this cause of action on behalf of himself and on behalf of the Nationwide Class, or in the alternative, on behalf of himself and on behalf of the California Sub-Class.

64. As a result of their reliance on Defendant's misrepresentations and omissions, Class Members suffered an ascertainable loss of money, property, and/or value of their Krazy Glue.

65. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

66. Under the UCL, a business act or practice is "unlawful" if it violates any established state or federal law.

67. Defendant's false and misleading advertising of Krazy Glue therefore was and continues to be "unlawful" because it violates Cal. B&P Code § 12606(b), because it contains unlawful nonfunctional slack fill as detailed herein.

68. Furthermore, Defendant's acts, conduct and practices also constituted violations of California's Consumers Legal Remedies Act; and violations of California's False Advertising Law.

69. By its conduct, Defendant has engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

70. Defendant's unfair or deceptive acts or practices occurred repeatedly in

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Defendant's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

71. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

72. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business & Professions Code.

REQUEST FOR JURY TRIAL

Plaintiff requests trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself, and all others similarly situated, requests the Court to enter judgment against Defendant, as follows:

1. An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
2. An order enjoining Defendant from further deceptive advertising, sales, and other business practices with respect to its Krazy Glue packaging;
3. A declaration requiring Defendant to comply with the various provisions of California's False Advertising Law and CLRA alleged herein and to make all the required representations;
4. An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
5. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of Krazy Glue, or make full restitution to Plaintiff and Class Members;
6. An award of attorneys' fees and costs, as allowed by law;
7. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;

8. An award of pre-judgment and post-judgment interest, as provided by law;
9. Leave to amend the Complaint to conform to the evidence produced at trial; and
10. Such other relief as may be appropriate under the circumstances.

Dated: January 31, 2017

Respectfully submitted,

Capstone Law APC

By: /s/ Lee A. Cirsch

Lee A. Cirsch
Robert K. Friedl
Trisha K. Monesi

Attorneys for Plaintiff David Spacone

01/31/2017

EXHIBIT 1

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David Spacone

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID SPACONE, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

ELMER'S PRODUCTS, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendant.

Case No.:

**DECLARATION OF DAVID SPACONE IN
SUPPORT OF VENUE FOR CLASS
ACTION COMPLAINT PURSUANT TO
CIVIL CODE SECTION 1780(d)**

01/31/2017

1 **DECLARATION OF DAVID SPACONE**

2 I, DAVID SPACONE, declare under penalty of perjury as follows:

3 1. I make this declaration based upon my personal knowledge except as to those
4 matters stated herein that are based upon information and belief, and as to those matters I
5 believe them to be true. I am over the age of eighteen, a citizen of the State of California, and
6 a Plaintiff in this action.

7 2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted
8 in support of Plaintiff's Selection of Venue for the Trial of Plaintiff's Cause of Action
9 alleging violation of California's Consumers Legal Remedies Act.

10 3. I reside in Hollywood, California, which is in the County of Los Angeles.

11 4. I purchased Elmer's Krazy Glue in or around January 2017 from True Value
12 hardware store, which is located in the County of Los Angeles and is authorized to sell
13 Elmer's products.

14 5. I am informed and believe that Defendant Elmer's Products, Inc. ("Defendant")
15 is a Delaware corporation organized and existing under the laws of the State of Delaware, and
16 registered to conduct business in California. Defendant Elmer's Products, Inc. corporate
17 headquarters are located at 460 Polaris Parkway, Westerville, OH 43082.

18 6. On information and belief, Defendant designs, tests, manufactures, markets,
19 distributes, and/or sells Krazy Glue, which is at issue in Plaintiff's Complaint, filed
20 concurrently herewith, in Los Angeles County and throughout the United States of America.

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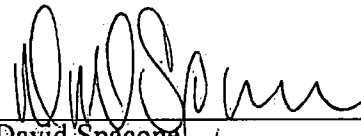
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7. The transactions described above form the basis of this action, or a substantial portion thereof, and occurred in the County of Los Angeles. On information and belief, Defendant conducts business in Los Angeles County, California, including, but not limited to, marketing, distributing, and/or selling its products to Class Members. Accordingly, Los Angeles County is a proper place for trial of this action.

8. I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed January 31, 2017 in Hollywood, California.



David Spacone

01/31/2017

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Lee A. Cirsch (SBN: 227668)
Lee.Cirsch@capstonelawyers.com
CAPSTONE LAW APC
1875 Century Park East, Los Angeles, California 90067
TELEPHONE NO.: 310.556.4800 FAX NO.: 310.943.0396
ATTORNEY FOR (Name): Plaintiff David Spacone

FOR COURT USE ONLY
FILED
Superior Court Of California
County Of Los Angeles

JAN 31 2017

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy
Cristina Grijalva

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 Hill Street
MAILING ADDRESS:
CITY AND ZIP CODE: Los Angeles, California 90012
BRANCH NAME:

CASE NAME:
Spacone, et al., etc. v. Elmer's Products, Inc., et al., etc.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BC 648907**
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve. e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **4**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 31, 2017
Lee A. Cirsch

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CIVIL CASE COVER SHEET

BY FAX

2192713710

SHORT TITLE: SPACONE v. ELMER'S PRODUCTS, etc.

CASE NUMBER

BC 648907

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose.
4. Mandatory personal injury filing in North District.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases - unlawful detainer, limited non-collection, limited collection, or personal injury).

Table with 3 columns: A (Civil Case Cover Sheet Category No.), B (Type of Action), and C (Applicable Reasons). Rows include categories like Auto (22), Uninsured Motorist (46), Asbestos (04), Product Liability (24), Medical Malpractice (45), and Other Personal Injury Property Damage Wrongful Death (23).

BY FAX

Auto Tort
Other Personal Injury/Property Damage/Wrongful Death Tort

SHORT TITLE:

SPACONE v. ELMER'S PRODUCTS, etc.

CASE NUMBER

Non-Personal Injury/ Property
Damage/ Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1, 2, 3
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1, 2, 3
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2, 5
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2, 5
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1, 2, 5
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1, 2, 5
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	5, 6, 11
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	5, 11
	<input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1, 2, 3, 5
	<input type="checkbox"/> A6031 Tortious Interference	1, 2, 3, 5
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 8, 9
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2, 6
	<input type="checkbox"/> A6032 Quiet Title	2, 6
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE:

SPACONE v. ELMER'S PRODUCTS, etc.

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
<input type="checkbox"/> A6123 Workplace Harassment		2, 3, 9	
<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case		2, 3, 9	
<input type="checkbox"/> A6190 Election Contest		2	
<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender		2, 7	
<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law		2, 3, 8	
<input type="checkbox"/> A6100 Other Civil Petition		2, 9	

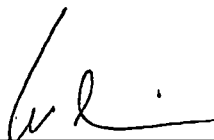
SHORT TITLE: SPACONE v. ELMER'S PRODUCTS, etc.	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS:
CITY:	STATE:	ZIP CODE:	

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 1-31-17


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

01/31/2017