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10

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 CLAUDINE MACASPAC, on behalf of
15 herself, all others similarly situated, and
16 the general public,

17 Plaintiff,

18 v.

19 HENKEL CORPORATION, a Delaware
20 corporation,

21 Defendant.
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Case No. **'17CV1755 H BLM**

**NOTICE OF REMOVAL OF
ACTION TO UNITED STATES
DISTRICT COURT**

[San Diego County Superior Court
Case No. 37-2017-00027801-CU-FR-
CTL]

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, as amended by the Class Action Fairness Act of 2005 (“CAFA”), Defendant HENKEL CORPORATION (“Henkel”), hereby removes this action from the Superior Court of the State of California, County of San Diego, to the United States District Court for Southern District of California. The grounds for removal are as follows:

1. On July 28, 2017, Claudine Macaspac (“Plaintiff”) filed a complaint in the Superior Court of the State of California, County of San Diego, against Henkel, Case No. 37-2017-00027801-CU-FR-CTL (the “Complaint”). Attached hereto as **Exhibit A** is a true and correct copy of the Complaint.

2. Exhibit A constitutes all the process, pleadings, and orders provided by counsel for Plaintiff to counsel for Henkel, which are hereby incorporated by reference.

3. On July 31, 2017, the Complaint was hand-delivered to Henkel’s registered agent for service of process. Accordingly, this Notice of Removal is timely, as it is filed within thirty (30) days of Henkel’s receipt of the Complaint. *See* 28 U.S.C. § 1446(b).

REMOVAL IS PROPER UNDER CAFA¹

4. This action is a civil action which may be removed to this Court by Henkel pursuant to the provisions of 28 U.S.C. §§ 1332(d), 1441, and 1453.

5. The Complaint was filed by Plaintiff on behalf of a putative class, defined as:

¹ This Notice of Removal is based on the allegations in the Complaint, and is filed subject to and with full reservation of rights. No admission of fact, law, or liability is intended by this Notice of Removal, and all defenses, motions, and pleas are expressly reserved.

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

(Compl. ¶ 31.)

5 6. The Complaint alleges that Henkel "...intentionally incorporated non-
 6 functional slack-fill in its packaging of the Purex Crystals product in order to
 7 mislead consumers, including Plaintiff and Members of the Class." (Compl. ¶ 17.)

8 7. The Complaint asserts three causes of action: (i) violation of
 9 California's Consumer Legal Remedies Act, (ii) violations of California's Unfair
 10 Competition Law (unlawful, unfair and fraudulent practices), and (iii) violations of
 11 California's False Advertising Law. The Complaint seeks restitution of the
 12 purchase price for all of the class members' purchases of the products. (Compl. ¶¶
 13 55, F.)

14 8. CAFA provides that a class action against a non-governmental entity
 15 may be removed if (1) the number of proposed class members is not less than 100;
 16 (2) any member of the proposed plaintiff class is a citizen of a State different from
 17 any defendant; and (3) the aggregate amount in controversy, exclusive of interest
 18 and costs, exceeds \$5,000,000. Each of these requirements is met here.

19 9. The Declaration of Brian Quinn in Support of Notice of Removal
 20 ("Quinn Declaration") is being filed concurrently with this Notice of Removal.

21 **NUMEROSITY**

22 10. California residents purchase the Products referenced in the Complaint
 23 at retailers throughout California and online. The Products have been sold in
 24 California over the past four years (Quinn Decl. ¶ 4.)

25 11. The Complaint alleges that the class consists of California residents
 26 who purchased any of the applicable Purex Crystals products over the past four
 27 years. (Compl. ¶ 31.)
 28

12. Based on Henkel's sales data, and the Complaint's allegations, the number of proposed class members is not less than 100. (See Quinn Decl. ¶ 4.)

MATTER IN CONTROVERSY IN EXCESS OF \$5,000,000

13. Where a complaint does not specify the amount of damages sought, the removing defendant bears the burden of establishing the amount in controversy by a "preponderance of the evidence." *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (sufficient evidence shows "more likely than not" that jurisdictional minimum is met). "The demonstration concerns what the plaintiff is claiming (and thus the amount in controversy between the parties) not whether the plaintiff is likely to win or be awarded everything." *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005).

14. CAFA provides that, "[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6).

15. In the Complaint, Plaintiff seeks restitution to the Class of all money paid for the Products and the restore those funds to class members (Compl. ¶¶ 55, F).

16. Based upon Henkel's sales data, class members have spent in excess of \$5,000,000 on the Products over the applicable period. (Quinn Decl. ¶ 5.)

17. Accordingly, based on the Complaint's allegations and Henkel's sales data, the \$5,000,000 amount in controversy requirement is satisfied here, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

18. As alleged in the Complaint, Plaintiff resides in the State of California. (Compl. ¶ 11.) Plaintiff also seeks to represent a class of California residents. (Compl. ¶ 31.) Henkel is informed and believes that Plaintiff is a California resident.

1 19. Henkel is a Delaware corporation that has its principal place of
2 business in Arizona. (Quinn Decl. ¶ 6.) Thus, Henkel is a citizen of Delaware and
3 Arizona.

4 20. Accordingly, the “minimal diversity” requirement under CAFA—*i.e.*,
5 that “any member of a class of plaintiffs is a citizen of a State different from any
6 defendant”—is satisfied for purposes of removal of this action. 28 U.S.C.
7 § 1332(d)(2)(A).

8 21. This action does not fall within any of the exclusions in 28 U.S.C.
9 §§ 1332(d) and 1446 because Henkel is not a citizen of the forum state of
10 California.

11 22. For all the foregoing reasons, this Court has original jurisdiction under
12 28 U.S.C. §§ 1332(d), 1441, and 1453.

13 23. Counsel for Henkel certifies, pursuant to 28 U.S.C. § 1446(d), that it
14 will promptly give notice of filing of this Notice of Removal to Plaintiff through
15 Plaintiff’s counsel of record and will promptly file with the Clerk of the Superior
16 Court of the State of California, County of San Diego, a copy of this Notice of
17 Removal.

18 Dated: August 30, 2017

MORRISON & FOERSTER LLP

20 By: /s/ William F. Tarantino

21 William Tarantino
WTarantino@mofo.com

22 Attorneys for Defendant
23 HENKEL CORPORATION
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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2017, a copy of the foregoing document was filed electronically with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will send an electronic copy of this filing to all counsel of record.

/s/ William F. Tarantino
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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/28/2017 at 12:38:30 PM

Clerk of the Superior Court
By Laura Melles, Deputy Clerk

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

CLAUDINE MACASPAC, on behalf of
herself, all others similarly situated, and the
general public,

Plaintiff,

vs.

HENKEL CORPORATION, a Delaware
corporation,

Defendant.

Case No. 37-2017-00027801-CU-FR-CTL

CLASS ACTION

COMPLAINT FOR:

1. **VIOLATIONS OF THE
CONSUMERS LEGAL REMEDIES
ACT, CAL. CIV. CODE §§ 1750, et
seq.**
2. **VIOLATIONS OF THE UNFAIR
COMPETITION LAW, CAL. BUS. &
PROF. CODE §§ 17200, et seq.**
3. **VIOLATIONS OF THE FALSE
ADVERTISING LAW, CAL. BUS. &
PROF. CODE §§ 17500, et seq.**

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: "Shoppers make decisions heuristically – based on shortcuts using inferences and incomplete data." "[p]eople assume the larger box is a better value."² This lawsuit charges Defendant with intentionally packaging its "Purex Crystals" product in large 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. Claudine Macaspac ("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 herself and her 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". 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

¹<http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-windowdown.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/magazine/2015/09/packaging-downsizing-less-is-not-more/index.htm> (quoting Mark Lang, Ph.D., professor of food marketing at Saint Joseph's University).

and your family's activewear, Purex® Crystals has you covered. Have fun and try them all!"³

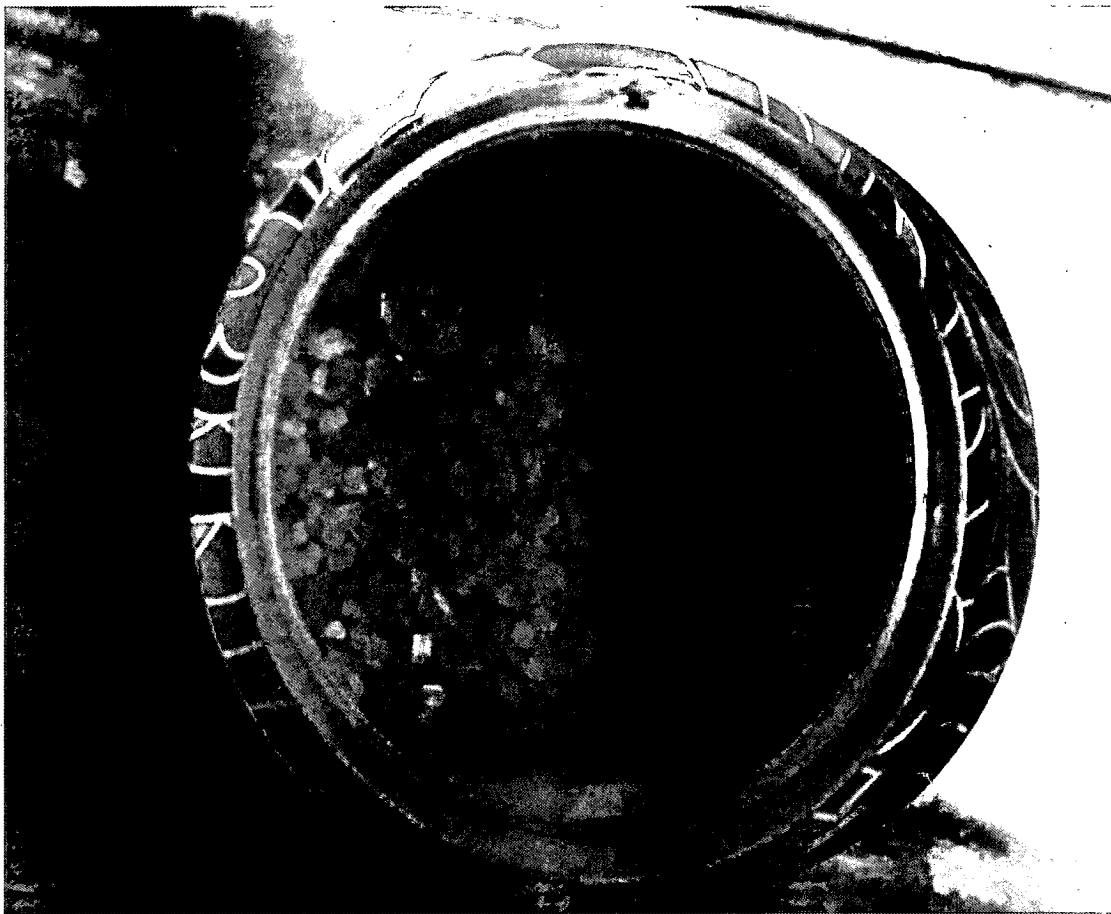


4. Plaintiff purchased Defendant's Purex Crystals products in May, 2017 from a Walmart store located at 4840 Shawline St, San Diego, CA, for approximately \$3.00.

5. Plaintiff expected to receive a full container of the Purex Crystals product, which is packaged in non-transparent containers, as depicted above. Plaintiff was surprised and disappointed when she 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, she would not have bought Defendant's product.

6. A photograph of a newly opened container of the Purex Crystals "Oh So Chic- Oh So Fresh" is shown on the following page of this complaint.

³ <http://www.purex.com/products/fragrance-boosters/purex-crystals>. Accessed on June 29, 2017.



JURISDICTION AND VENUE

6. Plaintiff brings this action pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781.

7. Pursuant to Cal. Civ. Proc. Code § 410.10 and Article VI, § 10 of the California Constitution, this Court has subject matter jurisdiction over this action. The amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the minimum jurisdictional amount for this Court.

8. This Court has both general and specific personal jurisdiction over Defendant because it has affirmatively established and maintained sufficient contacts with the State of California; conduct significant business in California and otherwise intentionally avails itself of the markets in California; and is registered to do business in California. This Court has specific personal jurisdiction arising from Defendant's decision to sell the Product in California.

10. Venue is proper in this County pursuant to, among others, Cal. Civ. Code § 1780(c) because Defendant conducts significant business here, engage in substantial transactions in this County, and because many of the transactions and material acts complained of herein occurred in this County—including, specifically, the transactions between Plaintiff and Defendant, and many of the transactions between Defendant and the putative Class members, as defined herein.

11. Plaintiff Claudine Macaspac is a citizen of the State of California and resides in San Diego, California. Plaintiff purchased a Purex Crystals product for personal consumption during the last four years in San Diego, 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, she 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

1 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for
 2 the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complain to
 3 reflect the true names and capacities of the DOE Defendants when such identities become
 4 known.

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

11 GENERAL ALLEGATIONS

12 California Law Prohibits Non-functional Slack-Fill

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

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

- 25 (1) Protection of the contents of the package.
- 26 (2) The requirements of machines used for enclosing the contents of the package.
- 27 (3) Unavoidable product settling during shipping and handling.
- 28 (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 of 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.



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

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

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

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

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

16 **Plaintiff Relied on Defendant's Misleading and Deceptive Conduct**

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

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

25 27. Defendant's product packaging was a material factor in Plaintiff's and the Class
26 Members' decisions to purchase the Purex Crystals product. Based on Defendant's product
27 packaging, Plaintiff and the Class Members believed that they were getting more Purex Crystals
28 product than was actually being sold. Had Plaintiff known Defendant's packaging was slack-

1 filled, she would not have bought the slack-filled Purex Crystals product.

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

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

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

11 **CLASS ACTION ALLEGATIONS**

12 31. Plaintiff brings this action on behalf of herself, all others similarly situated, and
13 the general public pursuant to Cal. Civ. Proc. Code § 382, Cal. Civ. Code § 1781, and Cal. Bus.
14 & Prof. Code § 17203. The proposed class is defined as follows:

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

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

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

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

26 35. Numerosity: While the exact number and identities of other Class Members are
27 unknown to Plaintiff at this time, Plaintiff is informed and believes that there are hundreds of
28 thousands of Members in the Class. Based on sales of the Purex Crystals products it is estimated

1 that the Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to
2 be created for these consumers, it is estimated that each subclass would have thousands of
3 Members. The Members of the Class are so numerous that joinder of all Members is
4 impracticable and the disposition of their claims in a class action rather than in individual actions
5 will benefit the parties and the courts.

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

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

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

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

- 24 i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Purex
25 Crystals products to Plaintiff, and those similarly situated, using false, misleading
26 and/or deceptive packaging and labeling;
- 27 ii. Whether Defendant's actions constitute violations of the CFPLA, California
28 Business & Professions Code § 12601 et seq.;

- 1 iii. Whether Defendant omitted and/or misrepresented material facts in connection
- 2 with the labeling, packaging, marketing, advertising and/or sale of its Purex
- 3 Crystals products;
- 4 iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of
- 5 Purex Crystals products constituted an unfair, unlawful or fraudulent practice;
- 6 v. Whether Defendant's packaging of the Purex Crystals products constituted
- 7 nonfunctional slack-fill;
- 8 vi. Whether, and to what extent, injunctive relief should be imposed on Defendant to
- 9 prevent such conduct in the future;
- 10 vii. Whether the Members of the Class have sustained damages as a result of
- 11 Defendant's wrongful conduct;
- 12 viii. The appropriate measure of damages and/or other relief; and
- 13 ix. Whether Defendant should be enjoined from continuing its unlawful practices.

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

18 41. The prerequisites to maintaining a class action for injunctive relief or equitable
19 relief are met, as Defendant has acted or refused to act on grounds generally applicable to the
20 Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as
21 a whole.

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

26 43. The prosecution of separate actions by Members of the Class would create a risk
27 of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant.
28 Additionally, individual actions may be dispositive of the interest of all Members of the Class,

1 although certain Class Members are not parties to such actions.

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

6 **FIRST CAUSE OF ACTION**

7 **VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**

8 **CAL. CIV. CODE §§ 1750, *et seq.***

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

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

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

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

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

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

27 51. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
28 prohibits "Misrepresenting that goods or services have sponsorship, approval, characteristics,

1 ingredients, uses, benefits, or quantities which they do not have or that a person has a
2 sponsorship, approval, status, affiliation, or connection which he or she does not have.” By
3 engaging in the conduct set forth herein, Defendant violated and continues to violate Section
4 1770(a)(5) of the CLRA, because Defendant’s conduct constitutes unfair methods of competition
5 and unfair or fraudulent acts or practices, in that it misrepresents that Purex Crystals products
6 have quantities they do not have.

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

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

16 54. Plaintiff and the Class suffered injuries caused by Defendant because (a) they
17 would not have purchased the Purex Crystals products on the same terms absent Defendant’s
18 illegal and misleading conduct as set forth herein; (b) they purchased the Purex Crystals products
19 due to Defendant’s misrepresentations and deceptive packaging in containers made, formed or
20 filled as to be misleading and containing non-functional slack-fill; and (c) the Purex Crystals]
21 products did not have the quantities as promised.

22 55. On or about July 28, 2017, prior to filing this action, Plaintiff sent a CLRA notice
23 letter to Defendant which complies with California Civil Code 1782(a). Plaintiff sent Henkel
24 Corporation, individually and on behalf of the proposed Class, a letter via Certified Mail,
25 advising Defendant that it is in violation of the CLRA and demanding that it cease and desist
26 from such violations and make full restitution by refunding the monies received therefrom.

27 56. Wherefore, Plaintiff seeks injunctive relief for these violations of the CLRA.
28

SECOND CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW

CAL. BUS. & PROF. 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 nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

"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 nonconforming 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.

"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

1 immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any
2 alleged benefits. Defendant's advertising is of no benefit to consumers.

3 **"Fraudulent" Prong**

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

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

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

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

24 **THIRD CAUSE OF ACTION**

25 **VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW**

26 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

27 68. Plaintiff realleges and incorporates herein by reference the allegations contained
28 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."

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

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

6 **PRAYER FOR RELIEF**

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

- 8 (A) For an Order certifying this action as a class action and appointing Plaintiff as
 9 class representatives, and designating Plaintiff's counsel as counsel for the Class;
- 10 (B) For an Order declaring that Defendant's conduct violated the CLRA, Cal. Civ.
 11 Code § 1750, et seq., and awarding (i) injunctive relief, (ii) costs of suit, and (iii)
 12 reasonable attorneys' fees;
- 13 (C) For an Order declaring that Defendant's conduct violated California's Unfair
 14 Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., and California's False
 15 Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq., and awarding (i)
 16 injunctive relief, (ii) actual damages, (iii) prejudgment and post judgment interest;
 17 (iv) exemplary and/or punitive damages pursuant to Cal. Civ. Code § 3294, (v)
 18 costs of suit, and (iv) reasonable attorneys' fees pursuant to, inter alia, Cal. Code
 19 of Civ. Proc § 1021.5;
- 20 (D) For compensatory damages in amounts to be determined by the Court and/or
 21 jury;
- 22 (E) For prejudgment interest on all amounts awarded;
- 23 (F) For an order of restitution and all other forms of equitable monetary relief, as
 24 pleaded;
- 25 (G) For injunctive relief as pleaded or as the Court may deem proper;
- 26 (H) For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and
 27 expenses and costs of suit as pleaded; and
- 28 (I) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: July 28, 2017

Respectfully submitted,

By: /s/ Ronald A. Marron

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Class***