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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 JOHN LEWIS, individually and on behalf of
13 all others similarly situated

14 Plaintiffs,

15 v.

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17 KRAFT HEINZ FOODS COMPANY, and
18 DOES 1-10, inclusive

19 Defendants.
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Case No.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 COMES NOW that Plaintiff John Lewis (“Plaintiff”) brings this action on behalf of
3 himself and all others similarly situated against Defendant Kraft Heinz Foods Company (“Kraft”
4 or “Defendant”). Plaintiff makes the following allegations pursuant to the investigation of his
5 counsel and based upon information and belief, except as to the allegations specifically pertaining
6 to himself, which are based on personal knowledge.

7 **INTRODUCTION**

8 1. Defendant Kraft Heinz Foods Company has advertised and sold millions of
9 containers of its “100% Grated Parmesan Cheese” or “100% Parmesan & Romano Cheese”
10 products as “100%” cheese. Independent laboratory testing shows, however, that such products are
11 not at all “100%” Parmesan, but that at least 3.8 percent of the purportedly “100%” Parmesan
12 consists of cellulose, a filler and anti-clumping agent derived from *wood pulp*. As detailed herein,
13 Defendant has made and continues to make unlawfully false, fraudulent, and misleading claims on
14 its food labels in violation of federal law¹ and the laws of the State of California.

15 2. Plaintiff and the members of the Class, as defined herein, purchased Kraft’s “100%”
16 Parmesan cheese or Parmesan & Romano cheese products because they were deceived into
17 believing that the products were 100% cheese. Because Kraft’s “100%” cheese products contain a
18 substantial amount of fillers and are not “100%” Parmesan and/or Romano cheese, Plaintiff and
19 members of the Class have been injured and have suffered an ascertainable out-of-pocket loss.
20 Plaintiff and members of the Class seek a refund and/or rescission of the transaction and all further
21 equitable and injunctive relief as provided by applicable law.

22 3. Plaintiff seeks relief in this action individually and on behalf of all purchasers of
23 Kraft’s “100% Grated Parmesan Cheese” or “100% Parmesan & Romano Cheese” products for
24 breach of express and implied warranties, negligent misrepresentation, fraud, and for violation of
25 the California Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*, California’s
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28 ¹ 21 U.S.C. § 343(a)(1) states that a food product is deemed “misbranded” if “its labeling is false or misleading in any particular.”

1 Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, and California’s False
2 Advertising Law (“FAL”), Bus & Prof. Code §§ 17500, *et seq*

3 **PARTIES**

4 4. Plaintiff John Lewis is a citizen of California, residing in Fresno. Around June of
5 2015, Mr. Lewis purchased a two-pack of 24 oz. containers of Kraft’s “100% Grated Parmesan
6 Cheese” for about \$10.69 at a store in Fresno, California. Mr. Lewis had been a long-time purchaser
7 of both “100% Grated Parmesan Cheese” and “100% Grated Parmesan & Romano Cheese”
8 products from Defendant. Mr. Lewis purchased Kraft’s products relying on the marketing statement
9 that the product is “100%” Parmesan and/or Romano cheese. Mr. Lewis would not have purchased
10 Kraft’s cheese products or would have paid significantly less for the products, had he known that
11 the “100%” representation is false and mischaracterizes the amount and percentage of real cheese in
12 the container. Mr. Lewis suffered injury in fact and lost money as a result of Kraft’s deceptive,
13 misleading, false, unfair, and fraudulent practices, as described herein

14 5. Defendant Kraft Heinz Foods Company is a Pennsylvania corporation with
15 headquarters in Pittsburgh, Pennsylvania and Chicago, Illinois. Defendant Kraft Heinz Food
16 Company also maintains and runs a production plant in Tulare, California, where, upon information
17 and belief, Parmesan and/or Romano cheese is produced.

18 6. Defendant Kraft Heinz Foods Company develops, manufactures, distributes, sells,
19 and advertises the products at issue here – “100% Grated Parmesan Cheese” and/or “100% Grated
20 Parmesan & Romano Cheese” (“Product”) – nationwide, including in California. Defendant has
21 long maintained substantial distribution, marketing, and sales operations in California, and in this
22 District.

23 **JURISDICTION AND VENUE**

24 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
25 because this case is a class action where the aggregate claims of all members of the proposed class
26 are in excess of \$5,000,000, exclusive of interests and costs, and Plaintiff, as well as most members
27 of the proposed Class, are citizens of states different from the states of Defendant. Defendant has
28 sold millions of containers of the Product

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10. As can be seen in the images above, Defendant’s key marketing representation with regard to their Parmesan Cheese product is that the container is full of nothing but “100% Grated Parmesan Cheese”, “100% REAL” Grated Parmesan cheese. Many of Defendant’s Products also further claim in all-caps bold type that the product contains “NO FILLERS”.

11. Consumers, including Plaintiff, reasonably rely on the label and believe Kraft’s statement that the Product consists of “100%” Parmesan cheese means that no substitutes or fillers are present in the container. Because the Product does in fact contain fillers and substitutes, the “100%” Parmesan claim is literally false and is also misleading to consumers, including Plaintiff.

1 12. The same is true of Kraft’s “100% Parmesan & Romano Cheeses”, which Kraft also
2 advertises as containing “100% REAL Grated Parmesan & Romano” and “NO FILLERS”.



23 13. . Independent testing shows that at least 3.8 percent of the Product is not Parmesan
24 cheese.² Indeed, at least 3.8 percent of the Product is not even cheese of any kind, but is rather
25 comprised of fillers and additives. In fact, at least 3.8 percent of the Product is cellulose, an anti-
26 clumping agent derived from *wood chips*.

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28 ² See <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood> (last accessed February 17, 2016)

1 14. Kraft has been falsely and misleadingly touting that its Products are “100%”
2 Parmesan and/or Romano Cheese for decades. These representations include, but are not necessarily
3 limited to marketing statements such as “100% REAL” and “NO FILLERS”.

4 15. Consumers, including Plaintiff and the Class, rely on these labels, advertisements, and
5 marketing representations and reasonably understand Defendant’s product to contain nothing but
6 100% “pure” parmesan or a blend of parmesan and some other pure cheese. Instead, these products
7 contain cellulose, as well as other fillers and preservatives.

8 16. In reliance on those representations, Plaintiff and the Class purchased millions of
9 dollars of Kraft grated cheese products over the relevant time period that they otherwise would not
10 have purchased.

11 17. Defendant has made, and continues to make, unlawful, false, fraudulent, and
12 misleading claims on the food labels of Kraft’s “100%” Grated Cheese Products. These claims are
13 prohibited by California’s consumer protection statutes and warranty laws which render these
14 Products misbranded and unfit for sale in the United States

15 **CLASS REPRESENTATION ALLEGATIONS**

16 18. Plaintiff brings this case as a class action under Federal Rule of Civil Procedure 23 on
17 behalf of a Class consisting of all persons in the United States who, within the relevant statute of
18 limitations period, purchased Kraft’s “100% Grated Parmesan Cheese” and/or Kraft’s “100%
19 Grated Parmesan and Romano Cheese” Products.

20 19. Plaintiff also seeks to represent a subclass defined as all members of the Class who
21 purchased the Products in California (the “California Subclass”).

22 20. . Excluded from the Class are Defendant, the officers and directors of the Defendant
23 at all relevant times, members of their immediate families and their legal representatives, heirs,
24 successors or assigns and any entity in which Defendant has or had a controlling interest.

25 21. Also expressly excluded are any judge and/or magistrate judge to whom this action is
26 assigned and any members of such judges’ staffs and immediate families.

27 22. Also excluded from the Class are persons or entities that purchased the Product for
28 purposes of resale.

1 23. Plaintiff is a member of the nationwide Class and the California Subclass.

2 24. Defendant sells millions of containers of the Product. The Product is available in
3 major supermarkets nationwide, including in California. Accordingly, members of the Class are so
4 numerous that their individual joinder herein is impracticable. The precise number of Class
5 members and their identities are unknown to Plaintiff at this time but may be determined through
6 discovery. Class members may be notified of the pendency of this action by mail and/or publication
7 through the distribution records of Defendant, third party retailers, and vendors.

8 25. Common questions of law and fact exist as to all Class members and predominate
9 over questions affecting only individual Class members. Common legal and factual questions
10 include, but are not limited to whether the Product is misbranded, and whether the labeling,
11 marketing and promotion of the Product is false, misleading, and fraudulent.

12 26. The claims of the named Plaintiff are typical of the claims of the Class in that the
13 named Plaintiff was exposed to Defendant's false, misleading and misbranded labels, purchased the
14 Product, and suffered losses as a result of that purchase.

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

19 28. The class mechanism is superior to other available means for the fair and efficient
20 adjudication of the claims of the Class members. Each individual Class member may lack the
21 resources to undergo the burden and expense of individual prosecution of the complex and
22 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases
23 the delay and expense to all parties and multiplies the burden on the judicial system presented by the
24 complex legal and factual issues of this case. Individualized litigation also presents a potential for
25 inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
26 management difficulties and provides the benefits of single adjudication, economy of scale, and
27 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of
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1 the liability issues will ensure that all claims and claimants are before this Court for consistent
2 adjudication of the liability issues.

3 **COUNT I**

4 **Breach of Express Warranty**

5 29. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
6 herein.

7 30. Plaintiff brings this Count individually and on behalf of the members of the Class.

8 31. In connection with the sale of the Product, Defendant issued an express warranty that
9 the Product consisted of “100%” Parmesan and/or Romano cheese.

10 32. Defendant’s affirmation of fact and promise on the Product’s label that the Product
11 consisted of “100%” Parmesan and/or Romano cheese became part of the basis of the bargain
12 between Defendant and Plaintiff and Class members, thereby creating express warranties that the
13 Product would conform to Defendant’s affirmation of fact, representations, promise, and
14 description.

15 33. Defendant breached its express warranty because Kraft’s “100% Grated Parmesan
16 Cheese” does not in fact consist of 100 percent Parmesan cheese, but is rather substantially filled
17 with cellulose and fillers. Similarly, Kraft’s “100% Grated Parmesan and Romano Cheese” does not
18 in fact consist of 100 percent Parmesan and Romano cheese, but is rather substantially filled with
19 cellulose and fillers. Additionally, products which contain representations such as “100% REAL”
20 and “NO FILLERS” are not actually “100% REAL” and contain fillers. In short, the Product does
21 not live up to Defendant’s express warranty.

22 34. Plaintiff and the Class Members were injured as a direct and proximate result of
23 Defendant’s breach because: (a) they would not have purchased the Product if they had known the
24 true facts; (b) they paid for the Product due to the mislabeling of the Product; (c) they would not
25 have purchased the Product on the same terms if they had known the true facts; (d) they paid a price
26 premium for the Product due to Defendant’s false warranties and affirmations of fact; and (d) the
27 Product did not have the characteristics or qualities as promised.

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COUNT II

Breach of Implied Warranty of Merchantability

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3 35. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
4 herein.

5 36. Plaintiff brings this Count individually and on behalf of the members of the Class.

6 37. The Uniform Commercial Code § 2-314 provides that, unless excluded or modified, a
7 warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a
8 merchant with respect to goods of that kind. To be “merchantable,” goods must, *inter alia*, “run,
9 within the variations permitted by the agreement, of even kind, quality and quantity within each unit
10 and among all units involved,” “are adequately contained, packaged, and labeled as the agreement
11 may require,” and “conform to the promise or affirmations of fact made on the container or label if
12 any.”

13 38. Defendant, through its acts and omissions set forth herein, in its sale, marketing, and
14 promotion of the Product, impliedly warranted that the Product consisted of 100 percent Parmesan
15 cheese.

16 39. Defendant was a merchant with respect to the goods of this kind which were sold to
17 Plaintiff and the Class, and there was in the sale to Plaintiff and other consumers an implied
18 warranty that those goods were merchantable.

19 40. However, Defendant breached that warranty implied in the contract for the sale of the
20 goods in that the Product does not contain the “quality and quantity” of Parmesan and/or Romano
21 cheese as impliedly warranted, and because the Product does not conform to the promises made on
22 its labels, as described herein.

23 41. As a result of Defendant’s conduct, Plaintiff and the Class did not receive goods as
24 impliedly warranted by Defendant to be merchantable in that they did not conform to the promises
25 and affirmations made on the container or label of the goods.

26 42. Plaintiff and the Class Members were injured as a direct and proximate result of
27 Defendant’s breach because: (a) they would not have purchased the Product if they had known the
28 true facts; (b) they paid for the Product due to Defendant’s implied warranties; (c) they would not

1 have purchased the Product on the same terms if they had known the true facts; (d) they paid a price
2 premium for the Product due to Defendant's implied warranties; and (d) the Product did not have
3 the characteristics or qualities as impliedly warranted.

4 **COUNT III**

5 **Negligent Misrepresentation**

6 43. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
7 herein.

8 44. Plaintiff brings this claim individually and on behalf of the members of the Class
9 against Defendant.

10 45. As discussed above, Defendant misrepresented that the Product contains "100%"
11 Parmesan and/or Romano cheese, when, in fact, the Product contains a substantial amount of fillers
12 and additives.

13 46. At the time Defendant made these representations, Defendant knew or should have
14 known that these representations were false or made them without knowledge of their truth or
15 veracity.

16 47. At an absolute minimum, Defendant negligently misrepresented and/or negligently
17 omitted material facts about the Product.

18 48. The negligent misrepresentations and omissions made by Defendant, upon which
19 Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually
20 induced Plaintiff and Class members to purchase the Product.

21 49. Plaintiff and Class members would not have purchased the Product, or would not
22 have purchased the Product on the same terms, if the true facts had been known.

23 50. The negligent actions of Defendant caused damage to Plaintiff and Class members,
24 who are entitled to damages and other legal and equitable relief as a result.

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COUNT IV

Negligent Misrepresentation

Fraud

51. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

52. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

53. As discussed above, Defendant provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about the Product, including but not limited to the fact that the Product did not consist of “100%” Parmesan and/or Romano cheese. These misrepresentations and omissions were made with knowledge of their falsehood.

54. The misrepresentations and omission made by Defendant, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Product.

55. The fraudulent actions of Defendant caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

COUNT V

Violation Of California’s Consumers Legal Remedies Act,

California Civil Code §§ 1750, et seq.

(Injunctive Relief Only)

56. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

57. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass against Defendant

58. Plaintiff and California Subclass members are consumers who purchased the Product for personal, family or household purposes. Plaintiff and the California Subclass members are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff and the

1 California Subclass members are not sophisticated experts with independent knowledge of the
2 character, development, composition, or nature of Parmesan cheese.

3 59. The Products that Plaintiff and other California Subclass members purchased from
4 Defendant were “goods” within the meaning of Cal. Civ. Code § 1761(a).

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

8 61. Defendant’s labeling claim that the Product consists of “100%” Parmesan and/or
9 Romano cheese, as discussed above, is false, fraudulent, and misleading because the Product does
10 not consist of 100 percent Parmesan and/or Romano cheese. In fact, the Product contains a
11 significant percentage of additives and fillers like cellulose making the “100%”, “100% REAL” and
12 “NO FILLERS” claims literally false and misleading to a reasonable consumer.

13 62. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits
14 “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,
15 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,
16 affiliation, or connection which he or he does not have.” By engaging in the conduct set forth
17 herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because
18 Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or
19 practices, in that it misrepresents the particular characteristics, benefits and quantities of the goods.

20 63. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a
21 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
22 another. By engaging in the conduct set forth herein, Defendant violated and continues to violate
23 Section 1770(a)(7) of the CLRA, because Defendant’s conduct constitutes unfair methods of
24 competition and unfair or fraudulent acts or practices, in that it misrepresents the particular
25 standard, quality or grade of the goods.

26 64. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or services with
27 intent not to sell them as advertised.” By engaging in the conduct set forth herein, Defendant
28 violated and continues to violate Section 1770(a)(9), because Defendant’s conduct constitutes unfair

1 methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the
2 intent not to sell the goods as advertised.

3 65. Plaintiff and the California Subclass members are not sophisticated experts with
4 independent knowledge of the character, development, composition, or nature of Parmesan and/or
5 Romano cheese. Plaintiff and the California Subclass acted reasonably when they purchased the
6 Product based on their belief that Defendant's representations were true and lawful.

7 66. Plaintiff and the California Subclass suffered injuries caused by Defendant because
8 (a) they would not have purchased the Product on the same terms absent Defendant's illegal and
9 misleading conduct as set forth herein, or if the true facts were known concerning Defendant's
10 representations; (b) they paid a price premium for the Product due to Defendant's
11 misrepresentations; and (c) the Product did not have the characteristics or quantities as promised.

12 67. Under California Civil Code § 1780(a), Plaintiff and members of the California
13 Subclass seek injunctive and equitable relief for Defendant's violations of the CLRA. Plaintiff has
14 mailed an appropriate demand letter consistent with California Civil Code § 1782(a). If Defendant
15 fails to take corrective action within 30 days of receipt of the demand letter, Plaintiff will amend his
16 complaint to include a request for damages as permitted by Civil Code § 1782(d).

17 68. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

18 **COUNT VI**

19 **Violation Of California's Unfair Competition Law,**
20 **California Business & Professions Code §§ 17200, et seq.**

21 69. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
22 herein.

23 70. Plaintiff brings this claim individually and on behalf of the members of the proposed
24 California Subclass against Defendant.

25 71. Defendant is subject to California's Unfair Competition Law, Cal. Bus. & Prof. Code
26 §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and include
27 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
28 advertising"

1 72. Defendant’s labeling claim that the Product consists of “100%” Parmesan and/or
2 Romano cheese, as discussed above, is false, fraudulent, and misleading because the Product does
3 not consist of 100 percent Parmesan cheese. In fact, the Product contains a significant percentage of
4 additives and fillers like cellulose making the “100%” claim literally false, and also misleading to a
5 reasonable consumer.

6 73. Defendant’s business practices, described herein, violated the “unlawful” prong of the
7 UCL by violating the CLRA and the FAL and other applicable law as described herein.

8 74. Defendant’s business practices, described herein, violated the “unfair” prong of the
9 UCL in that Defendant’s conduct is substantially injurious to consumers, offends public policy, and
10 is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any
11 alleged benefits. Defendant’s advertising is of no benefit to consumers, as it is untrue, misleading,
12 and unlawful. Creating consumer confusion regarding the amount of Parmesan cheese in the
13 Product is of no benefit to consumers.

14 75. Defendant violated the “fraudulent” prong of the UCL by misleading Plaintiff and the
15 California Subclass to believe that the Product actually consisted of “100%” Parmesan and/or
16 Romano cheese, when, in fact, the Product contained a significant amount of fillers, including
17 cellulose.

18 76. Plaintiff and the California Subclass members are not sophisticated experts with
19 independent knowledge of the character, development, composition, or nature of Parmesan cheese.
20 Plaintiff and the California Subclass acted reasonably when they purchased the Product based on
21 their belief that Defendant’s representations were true and lawful.

22 77. Plaintiff and the California Subclass suffered injuries caused by Defendant because
23 (a) they would not have purchased the Product on the same terms absent Defendant’s illegal and
24 misleading conduct as set forth herein, or if the true facts were known concerning Defendant’s
25 representations; (b) they paid a price premium for the Product due to Defendant’s
26 misrepresentations; and (c) the Product did not have the characteristics or quantities as promised.

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COUNT VII

Violation Of California's False Advertising Law,

California Business & Professions Code §§ 17500, et seq.

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4 78. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
5 herein.

6 79. Plaintiff brings this claim individually and on behalf of the members of the proposed
7 California Subclass against Defendant.

8 80. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, makes
9 it "unlawful for any person to make or disseminate or cause to be made or disseminated before the
10 public in this state, ... in any advertising device ... or in any other manner or means whatever,
11 including over the Internet, any statement, concerning ... personal property or services, professional
12 or otherwise, or performance or disposition thereof, which is untrue or misleading and which is
13 known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

14 81. Defendant engaged in a scheme of offering adulterated and mislabeled containers of
15 the Product for sale to Plaintiff and the California Subclass members by way of product packaging,
16 labeling, and other promotional materials. These materials misrepresented and/or omitted the true
17 content and nature of the adulterated and mislabeled Product. Defendant's advertisements and
18 inducements were made in California and come within the definition of advertising as contained in
19 Bus. & Prof. Code § 17500, *et seq.* in that the product packaging, labeling, and promotional
20 materials were intended as inducements to purchase Defendant's Product, and are statements
21 disseminated by Defendant to Plaintiff and the California Subclass members. Defendant knew that
22 these statements were unauthorized, inaccurate, and misleading.

23 82. Defendant's labeling claim that the Product consists of "100%" Parmesan and/or
24 Romano cheese, as discussed above, is false, fraudulent, and misleading because the Product does
25 not consist of 100 percent Parmesan and/or Romano cheese. In fact, the Product contains a
26 significant percentage of additives fillers like cellulose making the "100%", "100% REAL" and
27 "NO FILLERS" claims literally false and misleading to a reasonable consumer.

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1 83. Defendant knew or should have known, through the exercise of reasonable care that
2 the Product was and continues to be adulterated and misbranded, and that Defendant's
3 representations about the amount of Parmesan cheese in the Product were unauthorized, inaccurate,
4 and misleading.

5 84. Plaintiff and the California Subclass suffered injuries caused by Defendant because
6 (a) they would not have purchased the Product on the same terms absent Defendant's illegal and
7 misleading conduct as set forth herein, or if the true facts were known concerning Defendant's
8 representations; (b) they paid a price premium for the Product due to Defendant's
9 misrepresentations; and (c) the Product did not have the characteristics or quantities as promised.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
12 judgment against Defendant, as follows:

- 13 a. For an order certifying the Class and California Subclass under Rule 23 of the
14 Federal Rules of Civil Procedure, naming Plaintiff as representative of the
15 Class and California Subclass, and naming Plaintiff's attorneys as Class
16 Counsel to represent the Class and California Subclass members;
- 17 b. For an order declaring that Defendant's conduct violates the statutes
18 referenced herein;
- 19 c. For an order finding in favor of Plaintiff, Class, and California Subclass on all
20 counts asserted herein;
- 21 d. For compensatory and punitive damages in amounts to be determined by the
22 Court and/or jury;
- 23 e. For prejudgment interest on all amounts awarded;
- 24 f. For an order of restitution and all other forms of equitable monetary relief;
- 25 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 26 h. For an order awarding Plaintiffs, the Class, and the California Subclass their
27 reasonable attorneys' fees and expenses and costs of suit.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

Dated: March 23, 2016

Respectfully Submitted,

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