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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 CHERYL MATTLEY, on Behalf of Herself and)
13 All Other Persons Similarly Situated,)
14)
15 Plaintiff,)
16)
17 v.)
18)
19 KRAFT HEINZ FOODS COMPANY,)
20)
21 Defendant.)
22)
23)
24)
25)
26)
27)
28)

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Cheryl Mattley (“Plaintiff”), by her attorneys, alleges upon personal knowledge as
2 to her own acts, and as to all other matters upon information and belief based upon, *inter alia*, the
3 investigation made by and through her attorneys.

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself and a class of all consumers in the
6 United States who purchased Defendant Kraft Heinz Food Company’s (henceforth “Kraft”) Kraft-
7 branded Parmesan cheese (the “Class”).

8 2. Plaintiff and the Class have been harmed by Kraft’s misleading and improper
9 marketing of its Kraft-branded Parmesan cheese (the “Products”). In particular, and as alleged in
10 greater detail below, Kraft brazenly markets and advertises the Products as containing “100% Grated
11 Parmesan Cheese,” in oversize bold print that covers practically the entire face of the Product’s
12 container. However, as Kraft is well aware, the Products contain cellulose, a filler. Thus, Kraft’s
13 “100” claim is simply false and misleading. As such, Plaintiff seeks damages, equitable relief and/or
14 disgorgement for Defendant’s illegal conduct.

15 3. Plaintiff asserts claims individually and on behalf of all others similarly situated
16 under the Unfair Competition Law, California *Business and Professions Code* §§ 17200, *et seq.*
17 (“UCL” or “Section 17200”) and the Consumers Legal Remedies Act, California *Civil Code* §§ 1750
18 *et seq.* (the “CLRA”).

19 **JURISDICTION AND VENUE**

20 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
21 1332(d)(2), because the matter in controversy, upon information and belief, exceeds \$5,000,000,
22 exclusive of interests and costs, and this matter is a class action in which class members are citizens
23 of a different state than that of Defendant. As such, the amount in controversy exceeds the
24 jurisdictional minimum of this Court.

25 5. This Court also has jurisdiction over Defendant because it does sufficient business in
26 California, and has sufficient minimum contacts with California or otherwise intentionally avail
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1 itself of the markets within California through sales and marketing, to render the exercise of
2 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

3 6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391, because the acts of
4 Defendant occurred in this Judicial District. Moreover, the misconduct at issue had effects in this
5 County. Venue is also proper in this County because Kraft sells and distributes the Products to
6 consumers within this County.

7 **THE PARTIES**

8 7. Plaintiff Cheryl Mattley purchased various sizes of the Product on many occasions
9 during the last four years, and even prior, and was damaged by Defendant's mislabeling and
10 improper marketing of the Product as alleged herein. Plaintiff Cheryl Mattley is currently a resident
11 of Bakersfield, California.

12 8. Defendant Kraft Heinz Foods Company ("Kraft), which manufactures and distributes
13 the Product, is a an American worldwide food company located in Pittsburgh Pennsylvania. Kraft
14 currently has 13 different brands valued at \$500 million or more each. Kraft's principle executive
15 offices are located at 1 PPG Place, Suite 3200, Pittsburgh, Pennsylvania 15222.

16 **CLASS ACTION ALLEGATIONS**

17 9. Plaintiff brings this lawsuit, both individually and as a class action on behalf of
18 similarly situated customers of Kraft, pursuant to *Federal Rule of Civil Procedure* 23(a) and (b).
19 The proposed "Class" consists of:

20 All individuals in the United States who purchased Kraft-branded Parmesan cheese labeled
21 as "100% Grated Parmesan Cheese." Excluded from the proposed Class are Defendant, its
22 respective officers, directors, and employees, and any entity that has a controlling interest in
23 Defendant. Plaintiff reserves the right to amend the Class definition as necessary.

24 10. **Numerosity:** Upon information and belief, the Class comprises thousands of
25 consumers throughout the United States and is so numerous that joinder of all members of the Class
26 is impracticable. While the exact number of Class members is presently unknown and can only be
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1 ascertained through discovery, Plaintiff reasonably believes that there are at least tens of thousands
2 of Class members.

3 11. **Common Question of Law and Fact Predominate:** There are questions of law and
4 fact common to the Class, which predominate over any individual issues, including, but not limited
5 to:

- 6 (A) Whether Defendant engaged in the conduct alleged herein;
7 (B) Whether Defendant's practices were deceptive, unfair, improper and/or
8 misleading;
9 (C) Whether Defendant's conduct as alleged herein violated the UCL, California
10 *Business & Professions Code* §§ 17200 *et seq.*;
11 (D) Whether Defendant's conduct violated the CLRA, California *Civil Code* §§
12 1750 *et seq.*;
13 (E) Whether Plaintiff and Class members have sustained monetary loss and the
14 proper measure of that loss; and
15 (F) Whether Plaintiff and Class members are entitled to declaratory and injunctive
16 relief.

17 12. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class.
18 Plaintiff and all members of the Class have been similarly affected by Defendant's common course
19 of conduct since they all relied on Defendant's representations concerning the Product and
20 purchased the Product based on those representations.

21 13. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and
22 protect the interest of the Class. Plaintiff has retained counsel with substantial experience in
23 handling complex class action litigation. Plaintiff and her counsel are committed to prosecuting this
24 action vigorously on behalf of the Class and have the financial resources to do so.

25 14. **Superiority of the Class Action:** A class action is superior to all other available
26 methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the
27 claims of all Class members is economically unfeasible and procedurally impracticable. While the
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1 aggregate damages sustained by the Class are likely in the millions of dollars, the individual
2 damages incurred by each Class member resulting from Defendant's wrongful conduct are too small
3 to warrant the expense of individual suits. The likelihood of individual Class members prosecuting
4 their own separate claims is remote, and even if every Class member could afford individual
5 litigation, the court system would be unduly burdened by individual litigation of such cases.
6 Individual members of the Class do not have a significant interest in individually controlling the
7 prosecution of separate actions, and individualized litigation would also present the potential for
8 varying, inconsistent, or contradictory judgments, and would magnify the delay and expense to all of
9 the parties and to the court system because of multiple trials of the same factual and legal issues.
10 Plaintiff knows of no difficulty to be encountered in the management of this action that would
11 preclude its maintenance as a class action. In addition, Defendant has acted or refused to act on
12 grounds generally applicable to the Class and, as such, final injunctive relief or corresponding
13 declaratory relief with regard to the members of the Class as a whole is appropriate.

14 15. Unless a class is certified, Defendant will retain monies it took from Plaintiff and the
15 proposed Class by means of its unlawful conduct. Unless an injunction is issued, Defendant will
16 continue to commit the alleged violations, and the members of the Class and the general public will
17 continue to be misled.

18 **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness**

19 **of Final Injunctive or Declaratory Relief**

20 **(Fed. R. Civ. P. 23(b)(1) And (2))**

21 16. In the alternative, this action may properly be maintained as a class action, because:

22 (a) the prosecution of separate actions by individual Class members would create a risk
23 of inconsistent or varying adjudication with respect to individual Class members, which would
24 establish incompatible standards of conduct for the Defendant; or

25 (b) the prosecution of separate actions by individual Class members would create a risk
26 of adjudications with respect to individual members of the Class which would, as a practical matter,
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1 be dispositive of the interests of other Class members not parties to the adjudications, or
2 substantially impair or impede their ability to protect their interests; or

3 (c) the Defendant has acted or refused to act on grounds generally applicable to the
4 Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to
5 the Class as a whole

6 **Issue Certification**

7 **(Fed. R. Civ. P. 23(c)(4))**

8 17. In the alternative, common questions of fact and law, including those set forth above
9 are appropriate for issue certification.

10 **FACTUAL ALLEGATIONS**

11 18. According to Kraft, it is “a globally trusted producer of delicious foods.” Kraft’s
12 website further states in pertinent part:

13 Our family of trusted products were developed over a century ago by entrepreneurs
14 who created quality foods and placed consumer satisfaction first.¹

15 19. In pursuit of its mantra, Kraft makes numerous products with a variety of claims and
16 representations. For example, its Kraft-branded Parmesan cheese is labeled as “100% Grated
17 Parmesan Cheese.” This misleading marketing claim consumes practically the entire front
18 packaging of the Product.

19 20. Parmesan cheese contains three simple ingredients: milk, salt, and rennet (a natural
20 enzyme).

21 21. However, the Product contains additional fillers which makes such “100%”
22 advertising false and misleading on its face. In fact, in small print on the back of the Product, it is
23 clear that the Product includes “cellulose fillers to prevent caking and potassium sorbate to protect
24 flavor.” Moreover, consumers have no idea of the percentage of fillers contained in the Product.

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¹ See <http://www.kraftheinzcompany.com/company.htm>

1 22. As such, Defendant admits that its Product is not “100% Grated Parmesan Cheese.”
2 In other words, Defendant concedes that its representation prominently featured on the Product
3 labels is patently false.

4 23. For these reasons, Defendant knowingly and purposefully violated applicable laws
5 and regulations in the sale of the Product.

6 **The Additive: Cellulose**

7 24. Cellulose is primarily used to produce paperboard and paper, however, it has many
8 other industrial uses and is also found in film, explosives, plastics, cleaning detergents, automotive
9 brake pads, and asphalt to name a few. Cellulose is also used as a food additive. Companies are
10 increasingly adding cellulose to their food products in order to keep production costs low as the
11 prices of other food ingredients rise. Cellulose is cheap, extends the shelf life of processed foods,
12 and gives a “creamy” feeling in the mouth when consumed, among other things. Cellulose also
13 added to pre-packaged shredded cheese in order to prevent clumping.

14 25. Cellulose comes in various forms, each with a specific use. Powdered cellulose is
15 made by cooking raw plant fiber, usually wood pulp, in various chemicals to separate the cellulose,
16 and then purified. Modified versions go through extra processing, such as exposing them to acid to
17 further break down the fiber. While cellulose is derived from a “plant fiber,” it is made in laboratory
18 and follows a very complex chemical process. Besides powdered cellulose, there are two other
19 modified forms that are common in food. Microcrystalline cellulose, MCC, or cellulose gel and
20 carboxymethyl cellulose or cellulose gum are also found in foods. Each modified form gives food a
21 slightly different texture, from gelatinous to more liquid-like, depending on the varying amounts of
22 air and water that are trapped during the chemical process.

23 **Plaintiff’s Purchase of the Product**

24 26. Plaintiff Cheryl Mattley repeatedly purchased the Product primarily because of
25 Kraft’s “100% Grated Parmesan Cheese” marketing and advertising. For example, Plaintiff
26 purchased various sizes of the Product (24 ounce and smaller) several times a year for personal use
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1 from Sam's Club and Vons in Bakersfield, California. Plaintiff paid approximately \$10.00 for a 24
 2 ounce size of the Product.

3 27. Below is a picture of the Product purchased by Plaintiff:
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19 28. Had the Product been accurately and properly represented to the consuming public,
 20 she would not have bought the Product for the price she paid. Plaintiff would consider purchasing
 21 the Product in the future for a lower price if the product is truthfully advertised.

22 29. Thus, since Kraft misrepresented and failed to accurately represent the true nature of
 23 the Product, Defendant has improperly deprived Plaintiff of funds thereby causing her to suffer
 24 damages and injury in fact.
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2 **FIRST CAUSE OF ACTION**

3 **Unfair Business Practices Act**

4 ***California Business & Professions Code §§ 17200 et seq.***

5 30. Plaintiff, on behalf of herself and on behalf of all others similarly situated, realleges
6 and incorporates herein by reference each of the foregoing paragraphs.

7 31. The Unfair Business Practices Act defines unfair business competition to include any
8 “unfair,” “unlawful,” or “fraudulent” business or practice. Cal. Bus. & Prof. Code §§ 17200, *et seq.*
9 Unfair competition also includes “unfair, deceptive, untrue or misleading advertising.” The Act also
10 provides for injunctive relief and restitution for violations.

11 32. Throughout the relevant time period, Defendants committed acts of unfair
12 competition, as defined by *Business & Professions Code* §§ 17200, *et seq.*, by falsely labeling the
13 Product.

14 33. Defendant’s conduct is unfair in that the harm to Plaintiff and the Class arising from
15 it outweighs the utility, if any, of those practices.

16 34. Defendant’s practices constitute unlawful business practices in violation of the UCL
17 because, among other things, they violate laws and regulations including 21. C.F.R. § 161.190(c),
18 the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, and California’s False
19 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

20 35. Defendant’s conduct was fraudulent and likely to deceive reasonable consumers in
21 that Defendant omitted and/or failed to disclose material facts regarding the Product. Defendant’s
22 failure to properly and adequately disclose the true nature of its Product constitutes deception by
23 omission. Defendants had a duty to disclose these material facts.

24 36. The facts concealed and omitted are material facts in that a reasonable consumer
25 would have considered them important in deciding whether or not to purchase the Product.

26 37. As a result of Defendant’s practices, Plaintiff suffered injury in fact and lost money or
27 property. As a direct and proximate result of the acts and practices alleged above, pursuant to
28 California *Business & Professions Code* §17203, Plaintiff and the Class are therefore entitled to: (a)

1 an Order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full
2 restitution of all monies paid to Defendant as a result of its deceptive practices, including, but not
3 limited to, disgorgement of all profits derived from the sale of the Product; (c) interest at the highest
4 rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter*
5 *alia*, California Code of Civil Procedure §1021.5.

6 **SECOND CAUSE OF ACTION**

7 **Unfair Business Practices Act**

8 **California Business & Professions Code §§ 17500 et seq.**

9 38. Plaintiff, on behalf of herself and on behalf of all others similarly situated, realleges
10 and incorporates herein by reference each of the foregoing paragraphs.

11 39. The conduct and actions of Defendant complained of herein constitute false
12 advertising in violation of the False Advertising Law ("FAL"). Cal. Bus. & Prof. Code §§ 17500, *et*
13 *seq.*

14 40. Among other things, Defendant made representations regarding the Product at issue
15 that it knew, or should have known, were deceptive and likely to cause reasonable consumers to buy
16 the Product in reliance upon said representation. Defendant intended for Plaintiff and Class
17 members to rely on its representations and Plaintiff and Class members did rely on Defendant's
18 representations.

19 41. Defendant committed such violations of the FAL with actual knowledge or
20 knowledge fairly implied on the basis of objective circumstances.

21 42. As a result of Defendant's wrongful conduct, Plaintiff suffered injury in fact and lost
22 money or property.

23 43. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks
24 equitable relief in the form of an order requiring Defendant to refund Plaintiff and Class members
25 monies paid for the Product, and injunctive relief in the form of an order prohibiting Defendant from
26 engaging in the alleged misconduct described herein, as prayed for hereunder.
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THIRD CAUSE OF ACTION

Deceptive Practices

Consumers Legal Remedies Act, California *Civil Code* §§ 1750 *et seq.*

44. Plaintiff, on behalf of herself and on behalf of all others similarly situated, realleges and incorporates herein by reference each of the foregoing paragraphs.

45. At all relevant times, Plaintiff and each proposed Class member was a “consumer,” as that term is defined in Civil Code § 1761(d).

46. At all relevant times, the Product constituted “goods,” as that term is defined in Civil Code § 1761(a).

47. At all relevant times, Kraft was a “person,” as that term is defined in Civil Code § 1761(c).

48. At all relevant times, Plaintiff’s and each proposed Class Member’s purchase of Product constituted a “transaction,” as that term is defined in Civil Code § 1761(e).

49. Defendant’s practices, acts, policies, and course of conduct violated the CLRA in that Defendant’s represented that the Product had characteristics, uses and benefits which it does not have, in violation of § 1770(a)(5) of the CLRA.

50. Defendant’s practices, acts, policies, and course of conduct violated the CLRA in that Defendant improperly represented that the Product was of a particular standard, quality, or grade, in violation of § 1770(a)(7) of the CLRA.

51. Defendant’s practices, acts, policies, and course of conduct violated the CLRA in that Defendant represented that the Product had characteristics with the intent not to sell them as advertised, in violation of § 1770(a)(9) of the CLRA.

52. Defendant’s practices, acts, policies, and course of conduct violated the CLRA in that Defendant represented that a transaction confers or involves rights, remedies, or obligations which it does not have, in violation of § 1770(a)(14) of the CLRA.

53. Plaintiff seeks restitution of all monies received by Defendant as a result of its improper sale of the misleading Product as provided in California Civil Code § 1780. Plaintiff is

1 informed and believes that the amount of said restitution is unknown at this time, but will seek relief
2 to amend this complaint at the time of trial when the same has been ascertained.

3 54. Plaintiff seeks injunctive relief for the CLRA claims alleged in this Complaint.
4 Plaintiff's counsel has served on Defendant, contemporaneously with the filing of this Complaint, a
5 CLRA notice letter in accordance with California Civil Code § 1782(a). Plaintiff will amend this
6 Complaint to assert claims for additional relief under the CLRA in the event Defendants do not
7 rectify these issues within the appropriate time period outlined in the CLRA.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff requests on behalf of herself and other members of the Class, for
10 judgment against Defendant as follows:

11 1. For preliminary and permanent injunctive relief enjoining Defendant, its agents,
12 servants and employees, and all persons acting in concert with the Defendant, from engaging in, and
13 continuing to engage in, the unfair, unlawful and/or fraudulent business practices alleged above and
14 that may yet be discovered in the prosecution of this action;

15 2. For certification of the putative Class;

16 3. For restitution and disgorgement of all money or property wrongfully obtained by
17 Defendant by means of their herein-alleged unlawful, unfair, and fraudulent business practices;

18 4. Recovery of the amounts by which Defendant has been unjustly enriched;

19 5. For an accounting by Defendant for any and all profits derived by Defendant from its
20 herein-alleged unlawful, unfair and/or fraudulent conduct and/or business practices;

21 6. For attorneys' fees and expenses pursuant to all applicable laws including, without
22 limitation, California *Code of Civil Procedure* § 1021.5 and the common law private attorney
23 general doctrine; and

24 7. For costs of suit; and for such other and further relief as the Court deems just and
25 proper.

26 **JURY DEMAND**

27 Plaintiff hereby demands a trial by jury.

1 Dated: March 31, 2016

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