

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000, exclusive of interests and costs, and many members of the proposed Class are citizens of states different from the state of Defendant.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the acts that gave rise to this cause of action occurred in substantial part in this district.

CAUSE OF ACTION

6. Defendant Kraft has for decades marketed to retail consumers a grated “Parmesan Cheese” product (“the product”) often used as a condiment; the product’s cylindrical packaging and distinctive green and yellow trade-dress is a presence in millions of consumer households nationwide, many in Illinois.

7. Defendant has consistently marketed the product as consisting of a single ingredient: 100% Parmesan cheese.

8. Defendant’s Parmesan Cheese product has been and continues to be sold in supermarkets and other retail outlets across Illinois, and across the country.

9. The product in question is prominently labeled “100% GRATED PARMESAN CHEESE”.

10. However, the product is not 100% Parmesan cheese.

11. Rather, a significant percentage of the product consists of filler material that not only isn’t Parmesan cheese, but isn’t cheese at all.

12. Indeed, independent testing commissioned by Bloomberg News found that the product marketed by Kraft as “100%” Parmesan cheese in fact contained 3.9% cellulose – a filler

material derived from wood chips. See <<http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>>.

13. Because the product in facts consists of a mixture of cheese and cellulose, the representation on the product's packaging that the product is "100%" Parmesan cheese is false.

14. Plaintiff has purchased the product on many occasions, most recently in January, 2016 at a Jewel-Osco grocery store located in Chicago, IL.

15. In the process of purchasing the product, Plaintiff viewed the false representation contained on the product's packaging, and therefore reasonably believed that the product consisted of nothing but Parmesan cheese.

16. Plaintiff relied upon Defendant's false representations about the contents of its cheese product in deciding to purchase the product.

17. Had Plaintiff known that the product marketed to her as 100% Parmesan cheese in fact contained a mixture of cheese and cellulose, she would not have purchased the product.

18. Plaintiff suffered actual damages as a result of Defendant's conduct, including but not limited to the purchase price of a product she would not have purchased but for being exposed to Defendant's false representations, and/or the price premium paid for to Defendant for a product that was purportedly 100% cheese, when in fact the product was a less-valuable mixture of cheese and cellulose.

CLASS ALLEGATIONS

19. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure Rule 23(b)(3) on behalf of himself and a Class defined as follows:

“All persons who purchased Defendant’s product labeled as ‘Kraft 100% Grated Parmesan Cheese’ within the previous five years prior to the date of the filing of Plaintiff’s Complaint”¹

20. Excluded from the Class are Defendant, its legal representatives, assigns, and successors, and any entity in which Defendant has a controlling interest. Further excluded are Plaintiff’s attorney(s). Also excluded is the judge to whom this case is assigned and the judge’s immediate family.

21. Upon information and belief, there are thousands of persons in the Class, such that joinder of all members is impracticable.

22. Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

23. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

24. The factual and legal bases of Defendant’s liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class as a result of the purchase of a cheese-mixture product mislabeled as 100% cheese.

¹ Upon moving for class certification, Plaintiff will specify class period subsets pursuant to the applicable statutes of limitations for particular claims, where such limitations periods are less than five years.

Plaintiff and the other Class members have all suffered harm and damages as a result of Defendant's unlawful and wrongful misrepresentations.

25. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- (a) Did Defendant violate 815 ILCS 505/2 by representing that the product consisted of 100% Parmesan cheese when in fact it consisted of a mixture of cheese and cellulose?
- (b) Did Defendant breach express and implied warranties by representing that the product consisted of 100% Parmesan cheese when in fact it consisted of a mixture of cheese and cellulose?
- (c) Was Defendant unjustly enriched by representing that the product consisted of 100% Parmesan cheese when in fact it consisted of a mixture of cheese and cellulose?

FIRST CLAIM FOR RELIEF
Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act
(815 ILCS 505/2)

26. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

27. The Illinois Consumer Fraud and Deceptive Business Practices Act prohibits both deceptive and unfair business practices on the part of entities conducting business with consumers within the State of Illinois.

28. The ICFA provides, in pertinent part, that “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or

omission of such material fact” are “unlawful whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

29. The representation contained on the packaging of Defendant’s product that the product consisted on 100% cheese, rather than a mixture of cheese and cellulose, was false, and therefore a misrepresentation of a material fact in violation of 815 ILCS 505/2.

30. The failure to prominently disclose that the purportedly 100% cheese product contained cellulose was an omission of a material fact in violation of 815 ILCS 505/2.

31. The description of the product as “100%” cheese has been a major component of the product’s labeling for years; Defendant intended that Plaintiff and other consumers rely upon this description in deciding to purchase the product, particularly over other cheese products that were not represented to consist of 100% cheese.

32. Plaintiff did, in fact, rely on Defendant’s representations that the product consisted of 100% cheese in deciding to purchase the product.

33. On information and belief, the decisions to continue marketing the product as consisting of 100% cheese when in fact the product consisted on a mixture of cheese and cellulose were made within the state of Illinois, and a substantial part of the conduct resulting in the fraudulently-labeled product occurred in Illinois.

34. Plaintiff and members of the proposed class are consumers.

35. Plaintiff and other class members sustained actual harm as a direct and proximate result of Defendant’s violation of 815 ILCS 505/2, because they would not have purchased (and would not have paid the purchase price for) the product knowing that it did not consist of 100% cheese or that it contained a mixture of cheese and cellulose, they paid a price premium for a product

due to the misrepresentations, and they ultimately received a product that was worth less than it would have been had the representations been true.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of "100%" cheese.
- B. Actual damages;
- C. Punitive damages;
- D. Reasonable attorneys' fees and costs;
- E. Any other relief the Court deems just and appropriate.

SECOND CLAIM FOR RELIEF
Breach of Express Warranty

36. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

37. In connection with the sale of the product, via the aforementioned statements contained on the packaging of the product, Defendant issued an express warranty that the product consisted of 100% cheese.

38. This material representation and promise contained on the product's packaging that the product consisted of 100% cheese was a basis of the bargain between Defendant, and Plaintiff and other class members.

39. Defendant breached this express warranty by selling a product that was not in fact 100% cheese, but was rather a mixture of cheese and cellulose.

40. Plaintiff and other class members were injured as a direct and proximate result of Defendant's breach of warranty, because they would not have purchased (and would not have paid the purchase price for) the product knowing that the express warranty was false, they paid a price premium for a product subject to the false warranty, and they ultimately received a product that was worth less than it would have been in the warranted condition.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of "100%" cheese.
- B. Actual damages;
- C. Disgorgement;
- D. Any other relief the Court deems just and appropriate.

THIRD CLAIM FOR RELIEF
Breach of Implied Warranty of Merchantability

41. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

42. The Uniform Commercial Code § 2-314 provides that, unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. To be "merchantable," goods must, inter alia, "run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved," "are adequately contained, packaged, and labeled as the

agreement may require,” and “conform to the promise or affirmations of fact made on the container or label if any.

43. Defendant, through the conduct alleged herein, including but not limited to the practice of labeling the product as 100% cheese when it was in fact a mixture of cheese and cellulose, impliedly warranted that the product consisted entirely of Parmesan cheese.

44. Defendant was a merchant with respect to the goods of this kind that were sold to Plaintiff and the class, and there was an implied warranty that those goods were merchantable in the sale to Plaintiff and other consumers.

45. Defendant breached that warranty implied in the contract for the sale of the goods because the product does not contain the quality and quantity of Parmesan cheese as impliedly warranted, and because the product does not conform to the promises made on its labels, namely that the product would consist entirely of cheese.

46. Plaintiff and the class did not receive goods as impliedly warranted by Defendant to be merchantable because the product did not conform to the promises and affirmations made on its container or label.

47. Plaintiff and other class members were injured as a direct and proximate result of Defendant’s breach of warranty, because they would not have purchased (and would not have paid the purchase price for) the product knowing that the warranty was false, they paid a price premium for a product subject to the false warranty, and they ultimately received a product that was worth less than it would have been in the warranted condition.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff’s counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of “100%” cheese.
- B. Actual damages;
- C. Disgorgement;
- D. Any other relief the Court deems just and appropriate.

FOURTH CLAIM FOR RELIEF
Negligent Misrepresentation

48. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

49. As alleged above, Defendant has for years falsely represented that its grated Parmesan cheese product consists of 100% cheese, when in fact the product is a mixture of cheese and cellulose.

50. At the time that Defendant made these representations, Defendant knew or should have known that the representations were false.

51. Defendant at the very least negligently misrepresented and negligently omitted material facts about the product.

52. Defendant intended that Plaintiff and other class members rely upon these misrepresentations and omissions in deciding to purchase the product.

53. Plaintiff and other class members did, in fact, rely upon these misrepresentations and omissions, and would not have purchased the product had they known it did not consist entirely of cheese, or that it contained a mixture of cheese and cellulose.

54. Plaintiff and other class members sustained actual harm as a direct and proximate result of Defendant’s negligent misrepresentations, because they would not have purchased (and would not have paid the purchase price for) the product knowing that it did not consist of 100% cheese

or that it contained a mixture of cheese and cellulose, they paid a price premium for a product due to the misrepresentations, and they ultimately received a product that was worth less than it would have been had the representations been true.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of "100%" cheese.
- B. Actual damages;
- C. Disgorgement;
- D. Any other relief the Court deems just and appropriate.

FIFTH CLAIM FOR RELIEF
Fraud

55. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

56. As alleged above, Defendant has for years falsely represented that its grated Parmesan cheese product consists of 100% cheese, when in fact the product is a mixture of cheese and cellulose.

57. At the time that Defendant made these representations, Defendant knew that the representations were false.

58. Defendant intended that Plaintiff and other class members rely upon these misrepresentations and omissions in deciding to purchase the product.

59. Plaintiff and other class members did, in fact, rely upon these misrepresentations and omissions, and would not have purchased the product had they known it did not consist entirely of cheese, or that it contained a mixture of cheese and cellulose.

60. Plaintiff and other class members sustained actual harm as a direct and proximate result of Defendant's fraud, because they would not have purchased (and would not have paid the purchase price for) the product knowing that it did not consist of 100% cheese or that it contained a mixture of cheese and cellulose, they paid a price premium for a product due to the misrepresentations, and they ultimately received a product that was worth less than it would have been had the representations been true.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of "100%" cheese.
- B. Actual damages;
- C. Disgorgement;
- D. Any other relief the Court deems just and appropriate.

SIXTH CLAIM FOR RELIEF
Unjust Enrichment

61. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein.

62. As alleged above, Defendant has for years falsely represented that its grated Parmesan cheese product consists of 100% cheese, when in fact the product is a mixture of cheese and cellulose.

63. At the time that Defendant made these representations, Defendant knew that the representations were false.

64. The mislabeling of Defendant's cheese product as 100% cheese when, in fact it consisted of a mixture of cheese and cellulose, not only constituted fraud, breach of warranty, and a violation of the ICFA, but also violated a host of state and federal food labeling laws and regulations; these violations have persisted for decades.

65. Mislabeling a product as consisting of 100% cheese, when it is in fact a mixture of cheese and cellulose, constitutes wrongful conduct do to the contravention of food labeling laws and regulations, even if the conduct did not rise to the level of being tortious.

66. Plaintiff and other class members suffered a detriment as a direct and proximate result of Defendant's wrongful conduct, because they would not have purchased (and would not have paid the purchase price for) the product knowing that it did not consist of 100% cheese or that it contained a mixture of cheese and cellulose, they paid a price premium for a product due to the misrepresentations, and they ultimately received a product that was worth less than it would have been had the representations been true.

67. Defendant received benefits as a direct and proximate result of its wrongful conduct, through increased sales and price premiums paid by the unsuspecting consumers discussed above, who falsely believed they were purchasing a product that contained only cheese, and through savings on manufacturing costs obtained through manufacturing a cheaper, lesser-

quality product making undisclosed use of filler material derived not from cheese but rather from wood chips.

68. Defendant's benefits are directly tied to, and result immediately therefrom, the detriment suffered by Plaintiff and members of the proposed class.

69. Therefore, Plaintiff and the class are entitled to equitable relief including restitution and nonrestitutionary disgorgement of all of Defendant's ill-gotten revenue from the sale of its adulterated cheese mixture.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order certifying a class as defined herein, appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel, and awarding judgment to Plaintiff and the class for:

- A. An injunction prohibiting Defendant from marketing the product as consisting of anything other than a mixture of cheese and cellulose, including as consisting of "100%" cheese.
- B. Restitution;
- C. Disgorgement;
- D. Any other relief the Court deems just and appropriate.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

YVONNE AVERHART,
Plaintiff

By:

s/James P. Batson _____
One of Her Attorneys

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