



3. Defendant acted deceptively by labeling the Product as containing 100% parmesan because it in fact contains a significant amount of filler that is not cheese but is instead an artificial chemically-produced form of wood chips called cellulose.

4. The US market for hard Italian cheeses, which includes grated parmesan cheese, is worth hundreds of millions of dollars in sales annually and is highly competitive. Production of US-made parmesan cheese rose to approximately 336 million pounds in 2015.

5. Producing parmesan and other hard Italian cheeses is relatively expensive compared to other cheeses, and producers often add “fillers,” such as other less-expensive cheeses, to reduce costs and increase volume. One such filler is cellulose, an additive extracted using a highly toxic and chemical process from wood pulp.

6. By misrepresenting that the Product contains 100% cheese, Defendant is able to deceptively market its Product in an otherwise highly competitive market, charging a higher price than it could otherwise charge based on the promise that the consumer is purchasing “100%” parmesan cheese.

7. Defendant designed, manufactured, warranted, advertised and sold the Product internationally and throughout New York, Connecticut, and Florida.

8. A recent independent investigation of grated parmesan cheese products conducted by Bloomberg News found that many producers, including Defendant, have been deceptively mislabeling the amount of actual cheese present in their products. This investigation found that Defendant’s Product contains 3.8% cellulose, despite being clearly labeled as “100%” parmesan.

9. Plaintiff Rosemary Quinn purchased Defendant’s Product on numerous occasions in both Mount Kisco, New York and Danbury, Connecticut, based on the representations made by Defendant that the product contained 100% parmesan cheese.

10. Plaintiff Alfonso Fata purchased Defendant's Product in Orlando, Florida, based on the representations made by Defendant that the product contained 100% parmesan cheese.

11. Plaintiffs would not have purchased the Product at the price that they paid, if at all, if they had known that the Product was not pure parmesan cheese, but in fact also included cellulose, made from wood pulp, as an ingredient.

12. This action seeks, *inter alia*, actual damages and refunds, punitive damages, attorneys' fees, and the costs of this suit.

### **JURISDICTION AND VENUE**

13. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d), as minimal diversity exists, there are more than 100 class members, and the amount in controversy is in excess of \$5 million. Ms. Quinn is a citizen of New York; Mr. Fata is a citizen of Florida; for diversity purposes, Defendant is a citizen of neither New York or Florida.

14. The Court has personal jurisdiction over the Defendant because a substantial portion of the wrongdoings alleged herein occurred in New York. Defendant also has sufficient minimum contacts with New York, and has otherwise purposely availed itself of the markets in New York, through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

15. Venue is authorized pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred within this judicial district, and because Defendant has marketed and sold the Product at issue in this action within this judicial district and has done business within this judicial district.

**PARTIES**

16. Plaintiff Rosemary Quinn resides in Katonah, New York in Westchester County. Prior to learning of the cellulose content of Defendant's Product, Plaintiff Quinn purchased containers of Kraft 100% Grated Parmesan Cheese in Mount Kisco, New York, that included the prominent representation on the front of the label that the Product was "100%" parmesan cheese. Prior to learning of the cellulose content of Defendant's Product, Plaintiff Quinn also purchased a container of Kraft 100% Grated Parmesan Cheese in Danbury, Connecticut, that included the prominent representation on the front of the label that the Product was "100%" parmesan cheese. In both instances, Plaintiff Quinn read and reviewed the representations made on the label when she made the decision to purchase the Product and paid more than she otherwise would have been willing to pay had Defendant not deceptively labeled the Product as "100%" parmesan cheese.

17. Plaintiff Alfonso Fata resides in Orlando, Florida in Orange County. Prior to learning of the cellulose content of Defendant's Product, Plaintiff Fata purchased a container of Kraft 100% Grated Parmesan Cheese in Orlando, Florida, that included the prominent representation on the front of the label that the Product was "100%" parmesan cheese. Plaintiff Fata read and reviewed the representations made on the label when he made the decision to purchase the Product and paid more than he otherwise would have been willing to pay had Defendant not deceptively labeled the Product as "100%" parmesan cheese.

18. The Kraft Heinz Company is incorporated in Delaware with headquarters in Chicago, Illinois and Pittsburg, Pennsylvania. Defendant is the third largest food and beverage company in North America and does extensive business in New York, Connecticut, and Florida. Defendant develops, manufactures, distributes, sells and advertises "Kraft 100% Grated

Parmesan Cheese” nationwide, including in New York, Connecticut, and Florida as part of its billion-dollar “Kraft” brand.

### **FACTUAL BACKGROUND**

19. Defendant uniformly labels, markets, and advertises its Product as “100% Grated Parmesan Cheese.” As can be seen on the images below, this is the primary text on the front of the Product and the core representation being made to consumers.



20. Defendant markets its Product through a multitude of local, nationwide, and international retailers and distributors, including Wal-Mart, Target, and Amazon.

21. Reasonable consumers, including Plaintiffs, understand and expect that the Products will in fact contain 100% parmesan cheese based on that explicit prominent promise on each of the Product labels.

22. Consumers pay a premium price and are willing to pay more for the Product based on Defendant’s representation that the Product is, in fact, 100% parmesan cheese.

23. Unfortunately for consumers, the “100%” parmesan claim is objectively false. Independent testing of Defendant’s Product shows that at least 3.8% of the Product is not parmesan cheese, or cheese of any kind, but instead is cellulose, a substance produced from wood chips.<sup>1</sup>

24. Indeed, Defendant cannot contest that its Products contain cellulose because the small and hard to read print on the back of the label concedes that the prominent 100% parmesan representation on the front is false because the Product contains cellulose. Of course, reasonable consumers should not be required to read the small print on the back of a label to determine whether the main claim on the front is true.

25. Cellulose is a non-digestible plant fiber that is used in plastics, cleaning detergents, pet litter, brake pads, and construction materials. To cut costs, this inexpensive “filler” is also used in some food products. Producers grind up wood pulp and other plant matter and then typically the pulp is then cooked in an assortment of chemicals that may include sulfurous acid or lye to extract cellulose fibers, which are then used in asphalt, emulsion paints, and Defendant’s Product. Byproducts of this process can also include turpentine and various polymers that are used in tanning leather and making drywall. No reasonable consumer would expect 100% cheese to contain a wood pulp byproduct that is created using noxious and toxic chemicals.

### **CLASS ACTION ALLEGATIONS**

26. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Rosemary Quinn brings this class action on behalf of herself and the following Class of similarly situated

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<sup>1</sup> Lydia Mulvany, *The Parmesan Cheese You Sprinkle on Your Penne Could Be Wood*, BLOOMBERG BUSINESS, Feb. 16, 2016, available at <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>

individuals:

All persons who purchased in New York a “Kraft 100% Grated Parmesan Cheese” product from February 2010 to the present.

(the “New York Class”).

27. The New York Class specifically excludes Defendant and its officers, directors, agents and/or employees.

28. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Rosemary Quinn also brings this class action on behalf of herself and the following Class of similarly situated individuals:

All persons who purchased in Connecticut a “Kraft 100% Grated Parmesan Cheese” product from February 2010 to the present.

(the “Connecticut Class”).

29. The Connecticut Class specifically excludes Defendant and its officers, directors, agents and/or employees.

30. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Alfonso Fata brings this class action on behalf of himself and the following Class of similarly situated individuals:

All persons who purchased in Florida a “Kraft 100% Grated Parmesan Cheese” product from February 2012 to the present.

(the “Florida Class”).

31. The Florida Class specifically excludes Defendant and its officers, directors, agents and/or employees.

32. Members of each putative Class are so numerous that joinder of all members is impracticable. Disposition of this matter as a class action will provide substantial benefits and efficiencies to the Parties and the Court. While the exact number of Class Members is not

known at this time, it is generally ascertainable by appropriate discovery.

33. The rights of each Class Member were violated in an identical manner as a result of Defendant's deceptive, willful, reckless and/or negligent actions and/or inaction.

34. Questions of law and fact common to all New York Class Members exist and predominate over any questions affecting only individual Class Members including, *inter alia*:

- a) Whether Defendant made representations regarding the contents of the Product, which it produced and sold;
- b) Whether the representations Defendant made in its labeling, marketing, and promotion of the Product were false, misleading, and/or deceptive;
- c) Whether, by its misconduct as set forth here, Defendant has engaged in unlawful or deceptive business practices under New York law;
- d) Whether Defendant breached its express warranty;
- e) Whether Plaintiff Quinn and Class Members sustained damages as a result of Defendants' conduct alleged herein; and,
- f) Whether Plaintiff Quinn and Class Members are entitled to restitution and, if so, what is the proper measure of restitution.

35. Questions of law and fact common to all Connecticut Class Members exist and predominate over any questions affecting only individual Class Members including, *inter alia*:

- a) Whether Defendant made representations regarding the contents of the Product, which it produced and sold;
- b) Whether the representations Defendant made in its labeling, marketing, and promotion of the Product were false, misleading, and/or deceptive;

- c) Whether, by its misconduct as set forth here, Defendant has engaged in unlawful or deceptive business practices under Connecticut law;
- d) Whether Defendant breached its express warranty;
- e) Whether Plaintiff Quinn and Class Members sustained damages as a result of Defendants' conduct alleged herein; and,
- f) Whether Plaintiff Quinn and Class Members are entitled to restitution and, if so, what is the proper measure of restitution.

36. Questions of law and fact common to all Florida Class Members exist and predominate over any questions affecting only individual Class Members including, *inter alia*:

- a) Whether Defendant made representations regarding the contents of the Product, which it produced and sold;
- b) Whether the representations Defendant made in its labeling, marketing, and promotion of the Product were false, misleading, and/or deceptive;
- c) Whether, by its misconduct as set forth here, Defendant has engaged in unlawful or deceptive business practices under Florida law;
- d) Whether Defendant breached its express warranty;
- e) Whether Plaintiff Fata and Class Members sustained damages as a result of Defendants' conduct alleged herein; and,
- f) Whether Plaintiff Fata and Class Members are entitled to restitution and, if so, what is the proper measure of restitution.

37. Plaintiffs and their counsel will fairly and adequately represent the interests of Class Members. Plaintiffs have no interests antagonistic to, or in conflict with, Class

Members' interests. Plaintiffs' lawyers are highly experienced in the prosecution of consumer class action cases.

38. Plaintiffs' claims are typical of Class Members' claims in that Plaintiffs' claims and Class Member's claims all arise from Defendant's wrongful conduct. Plaintiffs and each of the other Class members have been injured by the same wrongful practices of Defendant. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the other Class Members' claims and are based on the same legal theories.

39. Plaintiffs will fully and adequately assert and protect the interests of the other Class members. In addition, Plaintiffs have retained class counsel who are experienced and qualified in prosecuting class action cases similar to this one. Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting with other Class Members' interests.

40. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiffs' and Class Members' claims. Plaintiffs and Class Members have been irreparably harmed as a result of Defendant's wrongful actions. Litigating this case as a class action will reduce the possibility of repetitious litigation relating to Defendants' deceptive advertising of the Product.

41. Class certification, therefore, is appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because the above common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

42. Class certification also is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendant has acted on grounds generally applicable to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate as to the Class as a whole.

43. The expense and burden of litigation would substantially impair the ability of Class Members to pursue individual lawsuits in order to vindicate their rights. Absent a class action, Defendant will retain the benefits of its wrongdoing despite its serious violations of the law.

**CLAIMS FOR RELIEF**

**COUNT I – VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349  
(On Behalf of the New York Class)**

44. Plaintiff Rosemary Quinn repeats, realleges, and incorporates by reference each of the foregoing allegations as though fully set forth herein.

45. Through its conduct described above, Defendant has engaged in deceptive acts and practices that resulted in injury to Plaintiff Quinn and the other members of the New York Class.

46. Representing that the Product contained 100% parmesan cheese, when it in fact contained substantial amounts of cellulose, is deceptive, and has the capacity, tendency, and effect of deceiving reasonable consumers who purchase the Product. Reasonable consumers would believe that the Product contains 100% parmesan cheese based upon Defendant's misrepresentations to that effect.

47. Defendant's unfair or deceptive practices are a willing and knowing violation of New York General Business Law § 349 because Defendant knew that its Product did not, in fact, contain 100% parmesan cheese, but instead contained 3.8% cellulose.

48. Plaintiff Quinn and the New York Class have suffered an ascertainable loss of money or property as a result of Defendant's actions. Plaintiff Quinn and the New York Class have been damaged in the amount of the purchase price for the Product that they paid. Plaintiff Quinn and the New York Class have also or alternatively been damaged because Defendant is able to and does charge a price premium for the Product and Plaintiff and the New York Class

are willing to pay more for the Product based on its representation that it is 100% parmesan cheese.

49. By reason of the foregoing, Defendant has willfully and knowingly violated N.Y. Gen. Bus. Law § 349, and should be enjoined from representing that its Product contains “100% grated parmesan.” Defendant is also liable to Plaintiff Quinn and other members of the New York Class for the damages that they have suffered as a result of Defendant’s actions, such damages to be determined at trial but not less than \$50.00 for each purchase of Defendant’s Product, such damages to be trebled, plus attorneys’ fees.

**COUNT II – VIOLATION OF CONNECTICUT  
UNFAIR TRADE PRACTICES ACT  
(On Behalf of the Connecticut Class)**

50. Plaintiff Rosemary Quinn repeats, realleges, and incorporates by reference each of the foregoing allegations as though fully set forth herein.

51. Through its conduct described above, Defendant has engaged in deceptive acts and practices, in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. § 42-110a *et seq.* (“CUTPA”), resulting in injury to Plaintiff Quinn and the other members of the Connecticut Class.

52. Plaintiff Quinn and the Connecticut Class have suffered an ascertainable and substantial loss of money as a result of Defendant’s actions, which could not be readily or easily avoided. Plaintiff Quinn and the Connecticut Class have been damaged in the amount of the purchase price for Defendant’s Product that they paid. Plaintiff Quinn and the Connecticut Class have also or alternative been damaged because Defendant is able to and does charge more for the Product and Plaintiff and the Connecticut Class are willing to pay more for the Product based on its representation that it is 100% parmesan cheese.

53. Punitive damages should be awarded to Plaintiff Quinn and the Connecticut Class because Defendant's conduct, as detailed herein, reveals a reckless indifference to the rights of consumers and an intentional, wanton, and malicious violation of those rights motivated by greed and un-tempered by fairness or compassion, even for the vulnerable consumers they victimize.

54. By reason of the foregoing, Defendant has violated CUTPA and is liable to Plaintiff Quinn and the Connecticut Class, pursuant to Conn. Gen. Stat. Ann. § 42-110a *et seq.*, for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, and for an award of punitive damages, and attorneys' fees and costs, and injunctive relief precluding the Defendant from continuing its unfair business practices.

**COUNT III – VIOLATION OF FLORIDA  
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT  
(On Behalf of the Florida Class)**

55. Plaintiff Alfonso Fata repeats, realleges, and incorporates by reference each of the foregoing allegations as though fully set forth herein.

56. Through its conduct described above, Defendant has engaged in deceptive acts and practices, in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201 *et seq.* ("FDUTPA"), resulting in injury to Plaintiff Fata and the other members of the Florida Class.

57. In Defendant's marketing of the Product, Defendant engaged in unfair methods of competition and unfair and deceptive acts that were offensive to established public policies of consumer protection. This deceptive marketing was likely to, and did in fact, mislead reasonable consumers, including Plaintiff Fata and members of the Florida Class, and materially affected their purchasing decisions.

58. Plaintiff Fata and the Florida Class have suffered an ascertainable and substantial loss of money as a result of Defendant's actions, which could not be readily or easily avoided. Plaintiff Fata and the Florida Class have been damaged in the amount of the purchase price for Defendant's Product that they paid. Plaintiff Fata and the Florida Class have also or alternative been damaged because Defendant is able to and does charge more for the Product and Plaintiff and the Florida Class are willing to pay more for the Product based on its representation that it is 100% parmesan cheese.

59. By reason of the foregoing, Defendant has violated FDUTPA and is liable to Plaintiff Fata and the Florida Class, pursuant to Fla. Stat. Ann. § 501.201 *et seq.*, for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, attorneys' fees, and court costs, and injunctive relief precluding the Defendant from continuing its deceptive and unfair business practices.

**COUNT IV – BREACH OF EXPRESS WARRANTIES  
(On Behalf of All Classes)**

60. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

61. Defendant constituted both a "merchant" and a "seller" in connection with its sale of the Product to the Plaintiffs and the members of each Class, as those terms are defined in the Uniform Commercial Code. Further, Plaintiffs and all members of each Class constituted "buyers" as that term is defined in the Uniform Commercial Code. The Product, itself, constituted "goods," as that term is defined in the Uniform Commercial Code.

62. Under both common law and Section 2-313 of the Uniform Commercial Code, the representations on Defendant's packaging provided Plaintiffs and other members of each Class with written express warranties, including, but not limited to, warranties that the Product

contained “100% grated parmesan cheese” and that it therefore contained no fillers.

63. Defendant breached these warranties by providing a product that consisted of 3.8% cellulose, a filler ingredient.

64. This breach resulted in damages to Plaintiffs and the other members each Class who bought the Product but did not receive the goods as warranted in that the Product did not contain the promised 100% parmesan cheese.

65. As a proximate result of Defendant’s breach of warranties, Plaintiffs and all members of each Class have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for Defendant’s Product which did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Defendant and they were deprived of the benefit of their bargain.

**COUNT V – UNJUST ENRICHMENT**  
**(On Behalf of All Classes)**

66. Plaintiffs reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

67. As a result of Defendant’s deceptive, deceptive, and misleading labeling, advertising, marketing, and sale of the Product, Defendant was enriched at the expense of Plaintiffs and the members of each Class through the payment of the purchase price for Defendant’s Product. Defendant saved on the cost of producing the product because it used a filler that is cheaper than cheese.

68. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiffs in light of the fact that the Product was not what Defendant purported it to be. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs for the monies paid

to Defendant for the purchase of the Product.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment against Defendant as follows:

A. Certifying this action as a class action, with the New York Class, Connecticut Class and Florida Class as defined above;

B. Declaring that Defendant is financially responsible for notifying all Class Members about the claims described herein;

C. Awarding compensatory damages to redress the harm caused to Plaintiffs and Class Members in the form of economic and non-economic harm resulting from Defendant's deceptive advertising of the Product. Plaintiffs and Class Members also are entitled to recover statutory damages and/or nominal damages. Plaintiffs and Class Members' damages were foreseeable by Defendant and exceed the minimum jurisdictional limits of this Court.

D. Awarding Plaintiffs and the other Class members pre-judgment and post-judgment interest;

E. Awarding Plaintiffs and the Class interest, costs and attorneys' fees;

F. Granting leave to amend the Complaint to conform to the evidence produced through discovery and/or at trial; and

G. Awarding Plaintiffs and the Class such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiffs hereby demands a trial  
by jury.

DATED: February 25, 2016  
White Plains, New York

By: /s/ Todd Garber  
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