

1 Rosemary M. Rivas (State Bar No. 209147)
rrivas@finkelsteinthompson.com
2 Quentin A. Roberts (State Bar No. 306687)
qroberts@finkelsteinthompson.com
3 **FINKELSTEIN THOMPSON LLP**
4 One California Street, Suite 900
San Francisco, California 94111
5 Telephone: (415) 398-8700
6 Facsimile: (415) 398-8704

7 *Attorneys for Individual and Representative*
8 *Plaintiff Charlene Agles*

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 CHARLENE AGLES on behalf of herself and all
14 others similarly situated,

15 Plaintiff,

16 vs.

17 KRAFT HEINZ FOODS COMPANY,

18 Defendant.
19

Case No.

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

JURY TRIAL DEMANDED

20
21 Plaintiff Charlene Agles (“Plaintiff”), on behalf of herself and all others similarly
22 situated, based on her own personal experience and on the investigation of their counsel, alleges
23 as follows:

24 **NATURE OF THE ACTION**

25 1. This is a civil action brought by Plaintiff on behalf of herself and all others
26 similarly situated. Plaintiff alleges that Defendant Kraft Heinz Food Company (henceforth
27 “Kraft”) makes false, deceptive and misleading claims about its Kraft-branded Parmesan cheese
28

1 (hereafter the “Product(s)”). Specifically, Kraft represents on the Product container that it
2 contains “100% Grated Parmesan Cheese”.

3 2. Kraft’s representations are literally false. Kraft’s Products do not contain “100%
4 Grated Parmesan Cheese,” but contain cellulose, a filler. Independent laboratory testing showed
5 that nearly 4% of the Product is cellulose, an industrial additive derived from wood pulp.

6 3. Plaintiff relied on Defendant’s false, deceptive, and misleading labelling claims
7 and suffered an injury in fact and a loss of money with each purchase of Defendant’s Products.

8 4. As a result of Defendant’s false, deceptive, and misleading labeling, consumers
9 such as Plaintiff do not receive the benefit of their bargain. They lost the opportunity to purchase
10 and consume other products that are truly 100% Parmesan cheese.

11 5. Kraft’s representations violate the Consumers Legal Remedies Act, Cal. Civ.
12 Code §§ 1750, *et seq.* (“CLRA”), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,
13 *et seq.* (“FAL”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
14 (“UCL”), and constitute breach of express warranty

15 6. Accordingly, Plaintiff seeks an order requiring Defendant to, among other things:
16 (1) cease the unlawful marketing alleged herein; (2) conduct a corrective advertising campaign;
17 and (3) pay restitution to Plaintiff and Class members.

18 **JURISDICTION AND VENUE**

19 7. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
20 Act, 28 U.S.C. § 1332(d) because the aggregate amount in controversy exceeds \$5 million,
21 exclusive of interests and costs; the number of members of the proposed Class exceeds 100; and
22 Plaintiff and the majority of Class members are citizens of different states than the Defendant.

23 8. This Court has personal jurisdiction over the Defendant because it conducts
24 substantial business in the State of California, including advertising and sales of the Product.

25 9. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(2)
26 because Defendant conducts substantial business within this District.

27 **PARTIES**

28 10. Plaintiff Charlene Agles is a citizen of California. Within the last four years, Ms.

1 Agles has regularly purchased Kraft 100% Grated Parmesan Cheese at Costco and Raley's in
2 California.

3 11. Defendant Kraft Heinz Foods Company is a Pennsylvania corporation with
4 headquarters 1 PPG Place, Suite 3200, Pittsburgh, Pennsylvania 15222.

5 **SUBSTANTIVE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 **The Parmesan Cheese Market**

7 12. Cheese is an important part of many Americans' diets. Over the last four decades,
8 Americans have significantly increased their average cheese consumption, especially among
9 Italian varieties. Availability of Italian cheeses, spurred in part by its inclusion in convenience
10 foods and pre-packaged products, has increased to 14.9 pounds per person in the United States in
11 2012.

12 13. Parmigiano-Reggiano cheese, which in English is Parmesan cheese, contains
13 three simple ingredients: milk, salt, and rennet (a natural enzyme). A number of food
14 manufacturers, such as Kraft, Digiorno, and Target, purport to sell Parmesan cheese to
15 consumers.

16 14. Kraft is the fifth-largest food and beverage company in the world, according to its
17 Full Year 2015 Results Press Release.¹

18 15. Kraft's cheese products are perennial best-sellers, making up 33% of Kraft's
19 revenue in 2014.² Production of large quantities of cheese is costly, as Kraft reports: "The most
20 significant cost components of our cheese products are dairy commodities, including milk and
21 cheese." *Id.* at p.3. Kraft further reports: "hedging our costs for one of our key commodities,
22 dairy products, is difficult because dairy futures markets are not as developed as many other
23 commodities futures markets. Continued volatility or sustained increases in the prices of
24 commodities and other supplies we purchase could increase the costs of our products, and our
25 profitability could suffer." *Id.* at p.10.

26
27 ¹ See <http://ir.kraftheinzcompany.com/releases.cfm> (Last Accessed March 2, 2016).

28 ² 2014 Annual Report (on Form 10-K) <http://ir.kraftfoodsgroup.com/annuals.cfm> (Last accessed March 2, 2016).

1 16. Unfortunately, the continued popularity of Parmesan cheese among American
2 consumers, coupled with the high prices and volatility of the inputs used to make it, have created
3 a strong incentive for sellers of Parmesan cheese to cut costs.

4 **Defendant’s False Labelling of 100% Grated Parmesan Cheese**

5 17. Kraft’s Product labels prominently advertise: “100% Grated Parmesan Cheese”
6 (see Image 1, below).



19 Image 1

20 18. Kraft’s representation on the Product’s label is literally false. The Product does
21 not contain “100% Grated Parmesan Cheese” because it contains industrial fillers. Recent
22 independent testing revealed that at least 3.8 per cent of the Product is cellulose, an industrial
23 additive produced from wood pulp.³

24 19. A reasonable consumer would not consider a product containing around 4% of
25 cellulose to be “100% Grated Parmesan Cheese.”

26 20. Defendant identifies cellulose in small print on the back of the Product’s

27
28 ³ See <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood> (Last accessed March 3, 2016)

1 packaging. (See Image 2, below).



18 Image 2

19 21. The size and placement, however, are in stark contrast to the conspicuous “100%
 20 Grated Parmesan Cheese” claim that appears in larger print in a more prominent location on the
 21 front of the packaging. Reasonable consumers, however, expect that any representations about
 22 the ingredients on the front of the packaging are consistent with the ingredients listed in the
 23 Nutrition Facts Panel.

24 **The Additive: Cellulose**

25 22. Cellulose is primarily used to produce paperboard and paper, however, it has
 26 many other industrial uses and is also found in film, explosives, plastics, cleaning detergents,
 27 automotive brake pads, and asphalt to name a few. Cellulose is also used as a food additive.
 28 Companies are increasingly adding cellulose to their food products in order to keep production

1 costs low as the prices of other food ingredients rise. Cellulose is cheap, extends the shelf life of
2 processed foods, and gives a “creamy” feeling in the mouth when consumed, among other
3 things. Cellulose also added to pre-packaged shredded cheese in order to prevent clumping.

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

13 **Plaintiff Purchased the Product in Reliance on Defendant’s Misrepresentation**

14 24. Kraft’s misrepresentation is not only literally false, but is misleading to
15 consumers. Consumers, including Plaintiff, reasonably relied upon Kraft’s representation that
16 the Product contained 100% Grated Parmesan Cheese.

17 25. Ms. Agles has previously used Kraft 100% Grated Parmesan Cheese daily in her
18 household. She has purchased many packages of the Product over the past four years in reliance
19 on Defendant’s representation that it contained 100% grated Parmesan cheese. Kraft’s
20 representation that the Product contained “100% Grated Parmesan Cheese” was material to Ms.
21 Agles’ decision to purchase the Product. Ms. Agles was willing to pay for the Product because
22 of the representation that the Product contained 100% Grated Parmesan Cheese, and would not
23 have purchased the Product if she knew otherwise, or would have paid less for the Product.

24 **CLASS ACTION ALLEGATIONS**

25 26. Plaintiff brings this action on behalf of herself and on behalf of the following
26 Classes (collectively referred to as “Class” or “Classes”) initially defined as:

27 **All persons in the United States who purchased one or more Kraft 100%**
28 **Grated Parmesan Cheese products (“Nationwide Class”).**

- 1 (d) Whether Defendant’s practices are likely to deceive reasonable
- 2 consumers;
- 3 (e) Whether Defendant’s actions constitute violations of the California
- 4 Consumers Legal Remedies Act, Cal. Civ. Code section 1750, *et seq.*;
- 5 (f) Whether Defendant’s actions constitute violations of the California
- 6 Business and Professions Code section 17500, *et seq.*;
- 7 (g) Whether Defendant’s actions constitute a breach of express warranty; and
- 8 (h) The nature of the relief, including damages and equitable relief, to which
- 9 Plaintiff and members of the Class are entitled.

10 **Typicality of Claims**

11 **(Fed. R. Civ. P. 23(a)(3))**

12 30. Plaintiff’s claims are typical of the claims of the Class because Plaintiff, like all
13 other Class members, purchased Kraft 100% Grated Parmesan Cheese labeled and marketed by
14 Defendant.

15 **Adequacy of Representation**

16 **(Fed. R. Civ. P. 23(a)(4))**

17 31. Plaintiff is an adequate representative of the Class, because her interests do not
18 conflict with the interests of the members of the Class and she has retained counsel competent
19 and experienced in complex class action and consumer litigation.

20 32. The interests of Class members will be fairly and adequately protected by Plaintiff
21 and her counsel.

22 **Superiority of a Class Action**

23 **(Fed. R. Civ. P. 23(b)(3))**

24 33. A class action is superior to other available means for the fair and efficient
25 adjudication of the claims of Plaintiff and Class members. The damages suffered by each
26 individual Class member, while significant, are small given the burden and expense of individual
27 prosecution of the complex and extensive litigation necessitated by Defendant’s conduct.
28 Further, it would be virtually impossible for the members of the Class individually to redress

1 effectively the wrongs done to them. And, even if members of the Class themselves could afford
2 such individual litigation; the court system could not, given the many thousands of cases that
3 would need to be filed. Individualized litigation would also present a potential for inconsistent
4 or contradictory judgments. Individualized litigation would increase the delay and expense to all
5 parties and the court system, given the complex legal and factual issues involved. By contrast,
6 the class action device presents far fewer management difficulties and provides the benefits of a
7 single adjudication, economy of scale, and comprehensive supervision by a single court.

8 **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness**
9 **of Final Injunctive or Declaratory Relief**

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

11 34. In the alternative, this action may properly be maintained as a class action,
12 because:

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

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

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

23 **Issue Certification**

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

25 35. In the alternative, common questions of fact and law, including those set forth
26 above are appropriate for issue certification.
27
28

FIRST CAUSE OF ACTION

On Behalf of the California Class

(For Violations of California’s Consumers Legal Remedies Act,

Cal. Civ. Code §§ 1750, *et seq.*)

36. Plaintiff incorporates by reference and realleges all paragraphs previously alleged as if fully set forth herein and further alleges as follows.

37. Defendant’s acts and practices violate the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”).

38. Defendant is a “person” within the meaning of California Civil Code sections 1761(c) and 1770, and provides “goods” within the meaning of Civil Code sections 1761(a) and 1770. Purchasers of the Product, including Plaintiff and Class members, are “consumers” within the meaning of Civil Code sections 1761(d) and 1770. Each purchase of package of the Product by Plaintiff and each Class member constitutes a “transaction” within the meaning of Civil Code sections 1761(e) and 1770.

39. Defendant made representations and material omissions regarding the nature of the Product that it knew, or should have known, were deceptive and likely to cause consumers to buy the product in reliance upon said representations.

40. Defendant had a duty not to make the literally false claim that the Product contains 100% Grated Parmesan Cheese. Defendant’s misrepresentation was material, in that a reasonable person would have considered it important in deciding whether or not to purchase the Product. Defendant’s concealment, omissions, misrepresentations and deceptive practices, in violation of the CLRA, were designed to induce Plaintiff and Class members to purchase the Products.

41. Defendant’s Products, acts, practices, representations, omissions, and courses of conduct with respect to the canning, labeling, promotion, marketing and sale of the Products violate the CLRA in that, among other things:

(a) Defendant represented that its Products had characteristics, ingredients, uses, benefits, or quantities which they do not have in violation of Civil Code section 1770(a)(5);

1 (b) Defendant represented that its Products were of a particular standard,
2 quality or grade when they are of another standard, quality or grade in violation of Civil Code
3 section 1770(a)(7); and

4 (c) Defendant advertised its Products with the intent not to sell them as
5 advertised in violation of Civil Code section 1770(a)(9).

6 42. As a direct and proximate result of Defendant's violations, Plaintiff and Class
7 members were injured.

8 43. Plaintiff has attached hereto the declaration of venue required by Civil Code §
9 1780(d).

10 44. Plaintiff seeks an order enjoining the acts and practices described above, and
11 awarding attorneys' fees and costs, and will amend this complaint to seek damages under the
12 CLRA if Defendant does not cure as provided thereunder.

13 **SECOND CAUSE OF ACTION**

14 **On Behalf of the California Class**

15 **(For Violations of the California False Advertising Law,**

16 **Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

17 45. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
18 as if fully set forth herein and further alleges as follows.

19 46. The conduct and actions of Defendant complained of herein constitute false
20 advertising in violation of the False Advertising Law ("FAL"). Cal. Bus. & Prof. Code §§
21 17500, *et seq.*

22 47. Among other things, Defendant made representations regarding the Product at
23 issue that it knew, or should have known, were deceptive and likely to cause reasonable
24 consumers to buy the Products in reliance upon said representation. Defendant intended for
25 Plaintiff and Class members to rely on its representations and Plaintiff and Class members did
26 rely on Defendant's representations.

27 48. Defendant committed such violations of the FAL with actual knowledge or
28 knowledge fairly implied on the basis of objective circumstances.

1 49. As a result of Defendant's wrongful conduct, Plaintiff suffered injury in fact and
2 lost money or property.

3 50. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks
4 equitable relief in the form of an order requiring Defendant to refund Plaintiff and Class
5 members monies paid for Products, and injunctive relief in the form of an order prohibiting
6 Defendant from engaging in the alleged misconduct described herein, as prayed for hereunder.

7 **THIRD CAUSE OF ACTION**

8 **On Behalf of the California Class**

9 **(For Unlawful Business Practices in Violation of the Unfair Competition Law, Cal.**

10 **Bus. & Prof. Code §§ 17200, *et seq.*)**

11 51. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
12 as if fully set forth herein and further alleges as follows.

13 52. The conduct and actions and misrepresentations of Defendant complained of
14 herein constitute unfair business practices in violation of the Unfair Competition Law, Cal. Bus.
15 & Prof. Code §§ 17200, *et seq.* ("UCL").

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

20 54. As a result of Defendant's alleged misconduct, Plaintiff has suffered injury in fact
21 and lost money or property.

22 55. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks
23 equitable relief in the form of an order requiring Defendant to cease its unlawful practices,
24 ordering restitution and/or disgorgement, and relief as prayed for hereunder.

25 **FOURTH CAUSE OF ACTION**

26 **On Behalf of the California Class**

27 **(For Unfair Business Practices in Violation of the Unfair Competition Law, Cal.**

28 **Bus. & Prof. Code §§ 17200, *et seq.*)**

1 56. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
2 as if fully set forth herein and further alleges as follows.

3 57. The conduct, actions, and misrepresentations of Defendant complained of herein
4 constitute unfair business practices in violation of the Unfair Competition Law, Cal. Bus. & Prof.
5 Code §§ 17200, *et seq.* (“UCL”).

6 58. Defendant’s practices constitute unfair business practices in violation of the UCL
7 because, among other things, they are immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to consumers, and/or any utility of such practices is outweighed by the
9 harm caused to consumers. Defendant’s practices caused substantial injury to Plaintiff and Class
10 members, are not outweighed by any benefits, and Plaintiff and Class members could not have
11 reasonably avoided their injuries.

12 59. As a result of Defendant’s alleged misconduct, Plaintiff has suffered injury in fact
13 and lost money or property.

14 60. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks
15 equitable relief in the form of an order requiring Defendant to cease its unfair practices, ordering
16 restitution and/or disgorgement, and relief as prayed for hereunder.

17 **FIFTH CAUSE OF ACTION**

18 **On Behalf of the California Class**

19 **(For Fraudulent Business Practices in Violation of the Unfair Competition Law,**
20 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

21 61. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
22 as if fully set forth herein and further alleges as follows.

23 62. The conduct, actions, and misrepresentations of Defendant complained of herein
24 constitute fraudulent business practices in violation of the Unfair Competition Law, Cal. Bus. &
25 Prof. Code §§ 17200 *et seq.* (“UCL”).

26 63. Defendant’s practices constitute fraudulent business practices in violation of the
27 UCL because, among other things, they are likely to deceive reasonable consumers.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief and judgment against Defendant, as follows:

- A. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiff as representative of the Class and designating her counsel as counsel for the Class;
- B. Awarding Plaintiff and the Class compensatory damages, in an amount exceeding \$5,000,000, to be determined by proof;
- C. For equitable and declaratory relief, and an order enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein;
- D. Awarding Plaintiff and the Class the costs of prosecuting this action, including expert witness fees;
- E. Awarding Plaintiff and the Class reasonable attorney's fees;
- F. Awarding pre-judgment and post-judgment interest; and
- G. Granting all other and further relief deemed appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all claims so triable.

Date: March 29, 2016

Respectfully submitted,
FINKELSTEIN THOMPSON LLP

By: /s/ Rosemary M. Rivas
Rosemary M. Rivas
Quentin A. Roberts
One California Street, Suite 900
San Francisco, California 94111
Telephone: (415) 398-8700
Facsimile: (415) 398-8704

*Attorneys for Individual and Representative
Plaintiff Charlene Agles*

**DECLARATION OF ROSEMARY M. RIVAS
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Rosemary M. Rivas, declare as follows:

1. I am an attorney with the law firm Finkelstein Thompson LLP, counsel for Plaintiff Charlene Agles, and the Proposed Class in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge, and if called upon to do so, could and would testify competently thereto.

2. Based on my research of publicly available records available at the website of the California Secretary of State, Defendant Kraft Heinz Foods Company conducts business within this judicial district.

I declare under penalty of perjury under the laws of the United States and the State of California this 29th day of March 2016 in San Francisco, California that the foregoing is true and correct.

/s/ Rosemary M. Rivas
Rosemary M. Rivas