

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA**  
**Civil Division**

GLORIA HACKMAN  
*Individually and on Behalf of All  
Others Similarly Situated and the  
General Public of the District of  
Columbia*

27 O St., NW, Apt 212  
Washington, DC 20001

Plaintiff,

v.

COLONNA BROTHERS., INC.  
4102 Bergen Turnpike  
North Bergen, NJ 07047-0808

Defendant.

Case No.: 2016 CA 002404 B

Judge:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**PRIVATE ATTORNEY GENERAL AND CLASS ACTION COMPLAINT**

**COMES NOW** Plaintiff Gloria Hackman, on behalf of herself, all other persons similarly situated and the general public of the District of Columbia, by and through undersigned counsel, and pursuant to DC Code §28-3905 makes this Complaint against Defendant Colonna Brothers, Inc. ("Colonna" or "Defendant"). In support of this Complaint, Plaintiff states the following:

**JURISDICTION**

1. Exclusive subject matter jurisdiction of the Court is invoked pursuant to D.C. Code §28-3905(k)(2), and by virtue of the fact that all acts and omissions complained of occurred in the District of Columbia.
2. This Court has personal jurisdiction over each Defendant pursuant to D.C. Code § 13-423(a) and § 13-422.
3. Venue lies in the Superior Court of the District of Columbia as the cause of action

arose in the District of Columbia.

### **PARTIES**

4. Plaintiff Gloria Hackman is an adult resident of the District of Columbia and a consumer and member of the general public.

5. Colonna is a food supply corporation with its principal place of business in North Bergen, NJ. It supplies various food products to retailers, including Shop-Rite, Pathmark, Key Foods, Jack's 99cent stores, Dollar Tree, and Manhattan Fruit Exchange. Dollar Tree alone operates more than 13,000 stores across the United States.

### **BACKGROUND**

6. Each of the preceding paragraphs is incorporated by reference herein.

7. Defendant develops, distributes, advertises and sells numerous products across the United States under its brand.

8. Defendant has developed, distributed, advertised and sold the product at issue here – “Colonna Grated Parmesan Cheese” (“Parmesan Cheese”) – at retail stores nationwide, including at the Colonna location at 1548 Benning Road NE, Washington DC 20002.

9. These products are sold and purchased for personal use and consumption in the District of Columbia.

### **THE SALE OF CELLULOSE-LADEN PARMESAN CHEESE AS A DECEPTIVE PRACTICE**

10. Each of the preceding paragraphs is incorporated by reference herein.

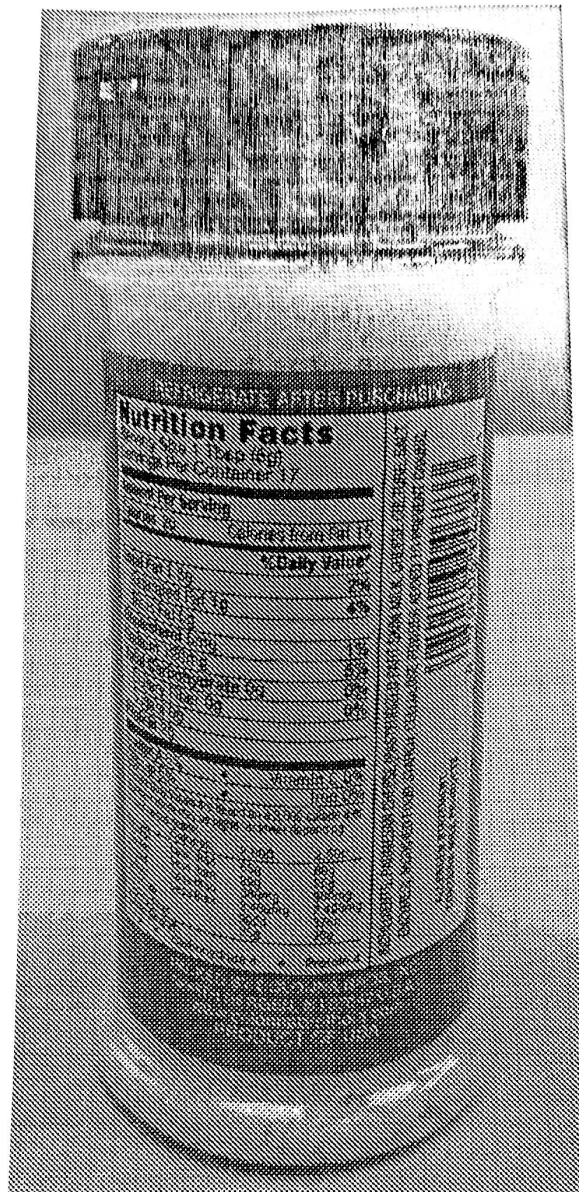
11. Packages and their labels should enable consumers to obtain accurate information as to the nature and quality of the contents and should facilitate value comparisons. When this information is misrepresented, it is deceptive and allows a person, manufacturer, or retailer to mislead consumers such as Gloria Hackman.

12. The container for Colonna's Parmesan Cheese represents that it is simply "Grated Parmesan Cheese".



13. This representation leads reasonable consumers to believe that the product is, in fact, all or nearly all parmesan cheese and therefore does not contain substitutes or fillers.

14. The back of the package leads reasonable consumers to the same conclusion. It discloses "cellulose" but states that it is merely "added to prevent caking," rather than as filler:



INGREDIENTS: PARMESAN CHEESE (PASTEURIZED PART SKIM MILK, CHEESE CULTURE, SALT, ENZYMES), MODIFIED FOOD STARCH, CELLULOSE POWDER ADDED TO PREVENT CAKING.

15. On Defendant's website, it represents that "all of our products are tested to ensure quality, safety, and taste." See <http://www.colonnabrothers.com/faqs/> (click "Are Your Products Tested?"), last accessed: Mar. 29, 2016.

16. Independent laboratory testing completed at the direction of Ms. Hackman revealed that Colonna's Parmesan Cheese contained 23.74 percent cellulose.

17. Testing of other companies' grated parmesan cheese showed very low cellulose levels and displayed no issues with caking. Safeway's "Signature Kitchens" brand had cellulose levels of 0.31 percent and Target's "Market Pantry" brand had cellulose levels of 0.30 percent. According to one expert, an acceptable level of cellulose would be 2 to 4 percent. *See* Lydia Mulvany, "The Parmesan Cheese You Sprinkle on Your Penne Could Be Wood," Bloomberg, 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>.

18. Cellulose is made from wood pulp and can be used as a filler in food products.

19. Colonna's use of 23.74 percent cellulose filler in its Parmesan Cheese is a deceptive practice.

20. Colonna's sale of the Parmesan Cheese with cellulose is a deceptive practice as Colonna is using the cellulose as filler.

21. Colonna's sale of the Parmesan Cheese with filler is deceptive to consumers, including Ms. Hackman, because the front of the package touts that it simply contains "Grated Parmesan Cheese" when it is nearly ¼ wood pulp.

22. Colonna's sale of the Parmesan Cheese with filler is deceptive to consumers, including Ms. Hackman, because there is no practical way for them to know, particularly prior to purchase, that the Parmesan Cheese contains such filler.

### **PURCHASE**

23. Each of the preceding paragraphs is incorporated by reference herein.

24. On or about March 1, 2016 Plaintiff Gloria Hackman purchased Colonna's

Parmesan Cheese at the Dollar Tree store located at 1548 Benning Road NE, Washington DC 20002.

25. This product was sold in a container that represented the product as simply “Grated Parmesan Cheese” and, on the back of the product, listed cellulose as an ingredient “added to prevent caking.”

26. The package was sealed and unable to be opened, inspected and tested prior to purchase.

27. Gloria Hackman purchased the product for testing and evaluation purposes on her behalf and for the general public.

28. Sale of the Parmesan Cheese is a deceptive and unlawful trade practice due to the presence of cellulose as filler, which contradicts the labeling representation that the Parmesan Cheese is simply “Grated Parmesan Cheese.”

29. Upon information and belief, Colonna has sold a significant volume of the Parmesan Cheese in the District of Columbia.

30. Colonna has marketed, advertised, and sold the Parmesan Cheese directly and/or indirectly (such as through its website) to the general public of the District of Columbia.

31. The packaging of the Parmesan Cheese is inherently deceptive as detailed herein and therefore contrary to the expectations imparted by Defendant through its representations and omissions to consumers, including Gloria Hackman.

32. Plaintiff acts for the benefit of the General Public as a Private Attorney General for claims in this action arising under the DCCPPA, which expressly authorizes an individual to act “on behalf of both the individual and the general public ... seeking relief from the use of a trade

practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased....” D.C. Code § 28-3905(k)(1)(B).

### **CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this class action pursuant to D.C. Super. Ct. R. Civ. P. 23 and case law there under on behalf of herself and all others similarly situated.

34. The Class is defined as: All individuals and entities in the District of Columbia who purchased “Colonna Grated Parmesan Cheese.” Excluded from the Class and Subclass are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Colonna and its subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

35. *Numerosity*: the Class is comprised of at least hundreds of purchasers of the Parmesan Cheese throughout the District of Columbia, making joinder impractical. Moreover, the Class is composed of an easily ascertainable, self-identifying set of individuals and entities who purchased Parmesan Cheese. The members of the Class are so numerous that joinder of all members is impracticable. The precise number of Class members can only be ascertained through discovery, which includes Defendant’s sales, testing, and complaint records. The disposition of their claims through a class action will benefit both the parties and this Court.

36. *Commonality*: The critical question of law and fact common to the Plaintiff Class that will materially advance the litigation is whether the Parmesan Cheese contains filler including cellulose, contrary to the expectations imparted by Defendant through its representations and omissions. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- a. Whether Defendant knew or should have known of the presence of cellulose as filler;
- b. Whether Defendant concealed from consumers and/or failed to disclose to consumers the presence of cellulose as filler;
- c. Whether Defendant breached the express warranty given to Plaintiffs and the Class;
- d. Whether Defendant breached the implied warranty of merchantability;
- e. Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things the failure of consideration in connection with and/or difference in value arising out of the variance between the Parmesan Cheese as warranted and the Parmesan Cheese containing the cellulose as filler;
- f. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement;
- g. Whether the Class would have purchased their Parmesan Cheese, or whether they would have paid a lower price for them, had they known of the presence of cellulose as filler in the Parmesan Cheese.

37. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in developing, marketing, advertising, warranting, and selling the Parmesan Cheese and Defendant's conduct in concealing the cellulose levels in the Parmesan Cheese to purchasers.

38. **Adequate Representation:** Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving, *inter alia*, product misrepresentation, breach of warranties and defective products.

39. **Predominance:** This class action is appropriate for certification because questions



of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

**UNLAWFUL AND DECEPTIVE TRADE PRACTICE – DC Code § 28-3905**

**Count I**

**(Brought Individually, on Behalf of the Class and on Behalf of the General Public of the District of Columbia)**

40. Each of the preceding paragraphs is incorporated by reference herein.

41. Plaintiff Gloria Hackman on behalf of herself as an individual, on behalf of all others similarly situated and on behalf of the general public files this action pursuant to D.C. Code § 28-3905(k).

42. Colonna's sale of the Parmesan Cheese with cellulose as filler, and in direct contradiction to its representation that the Parmesan Cheese is simply "Grated Parmesan Cheese," and with cellulose used for merely anti-caking, is an unlawful and deceptive trade practice pursuant to DC Code § 28-3904 in that Defendant:

- a. Misrepresents a material fact regarding the product's contents that tends to mislead by stating that the product is simply Grated Parmesan Cheese;
- b. Fails to state a material fact regarding the product's contents that tends to mislead by

omitting that the product contains cellulose as filler;

- c. Uses innuendo or ambiguity as to a material fact regarding the product's contents, which has a tendency to mislead by stating that the product is simply Grated Parmesan Cheese and with cellulose used merely for anti-caking;
- d. Represents that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- e. Sells consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Official Code, or by operation or requirement of federal law;
- f. Otherwise misleads.

43. These material misrepresentations affect the general public's ability to comparison shop by materially misleading about the contents and quality of the Parmesan Cheese.

44. Defendant intentionally made these misrepresentations knowing that they had the tendency to mislead consumers, such as Gloria Hackman.

45. Sale of the Parmesan Cheese with cellulose as filler, and in direct contradiction to the representation that it is simply parmesan cheese with cellulose used for anti-caking, constitutes an unfair trade practice.

46. As a result of this unfair and deceptive trade practice, Gloria Hackman seeks actual damages, statutory damages, punitive damages, injunctive relief, and reasonable attorney's fees for herself and all others similarly situated.

**BREACH OF EXPRESS WARRANTY**  
**Count II**  
**(Brought Individually and on Behalf of the Class)**

47. Each of the preceding paragraphs is incorporated by reference herein.

48. Colonna expressly warranted that the Parmesan Cheese was simply parmesan cheese and that cellulose was used merely for anti-caking.

49. Colonna also extended express warranting to consumers, including Plaintiff and the Class, by way of product descriptions and representations as to product qualities and characteristics made in sales literature at retail locations where Colonna is sold, on Colonna's website, and via advertisements, among other methods.

50. The Parmesan Cheese is not simply parmesan cheese and contains cellulose as filler.

51. At the time that Colonna made express warranties to Plaintiff and the Class, Colonna knew that the Parmesan Cheese had cellulose used as filler. Nevertheless, Colonna continued to place the defective product on the market and failed and omitted to inform its customers, including Plaintiff and class members of its defective nature.

52. Colonna's failure to remedy the defective nature of the Parmesan Cheese constitutes a breach of express warranty.

53. The foregoing breaches of express warranty at issue were substantial factors in causing damages to Plaintiff and the Class.

54. If members of the Class had known the true facts about cellulose in the Parmesan Cheese, they would have considered that information material in their decisions to purchase the Parmesan Cheese.

55. Plaintiff and members of the Class are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by the District of Columbia as well as all other applicable remedies.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(Brought Individually and on Behalf of the Class)**

56. Each of the preceding paragraphs is incorporated by reference herein.

57. Defendant is a merchant who sold the Parmesan Cheese to Plaintiff and the Class for personal use.

58. The Parmesan Cheese bears a label with a promise and affirmation of fact that it is simply parmesan cheese with cellulose merely used to prevent caking.

59. The Parmesan Cheese, however, contains cellulose as filler, breaching the implied warranty of merchantability.

60. The foregoing breach of the implied warranty at issue were substantial factors in causing damages to Plaintiff and the Class.

61. If members of the Class had known the true facts about cellulose in the Parmesan Cheese, they would have considered that information material in their decisions to purchase the Parmesan Cheese.

62. Plaintiff and members of the Class are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by the District of Columbia as well as all other applicable remedies.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Gloria Hackman, on behalf of herself, all others similarly situated and the general public of the District of Columbia, prays for a judgment against Defendant as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in D.C. Super. Ct. R. Civ. P. 23(a), (b)(2) and/or (b)(3);

B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;

C. Entering judgment in favor of Plaintiff, the Class and the general public of the District of Columbia and against Defendant for all compensatory, individual and class damages;

D. Granting Plaintiff, the Class and the general public of the District of Columbia treble damages or statutory damages, whichever is greater;

E. Granting Plaintiff its costs of prosecuting this action, including attorneys' fees, experts' fees and costs together with interest; and

F. Granting an injunction against Colonna that it be barred from producing, manufacturing, packaging and/or selling its Parmesan Cheese with cellulose in the District of Columbia; and

H. Granting such further relief as the Court deems just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: March 31, 2016

Respectfully submitted,

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