

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

DAN LANG, individually, and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

ALBERTSONS COMPANIES, INC.,)
an Idaho corporation, and SUPERVALU, INC.,)
a Minnesota corporation,)

Defendants.)

No. 2016CH03881
CALENDAR/ROOM 16
TIME 00:00
Class Action

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff DAN LANG (“Plaintiff”) brings this action individually, and on behalf of all others similarly situated, by and through counsel, and against Defendants ALBERTSONS COMPANIES, INC. (“Alberstons”) and SUPERVALU, INC. (“Supervalu”) (collectively “Defendants”), as follows:

FILED - 1
19 APR 11 11:33
CLERK

INTRODUCTION

1. Plaintiff brings this suit on behalf of himself and a Class of similarly situated individuals to stop Defendants from misrepresenting that “Essential Everyday 100% Grated Parmesan Cheese” (the “Product”) contains “100%” Parmesan cheese, when, in fact, at least 8.8% of the Product consists of fillers and preservatives. In addition, Plaintiff, on behalf of himself and the proposed class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth below.

2. Pursuant to the Federal Food, Drug and Cosmetic Act (“FDCA”), a food shall be considered “misbranded” if “its labeling is false or misleading in any particular.” See 21 U.S.C. § 343(a)(1).

3. Pursuant to the Illinois Food, Drug and Cosmetic Act (“IFDCA”), a food is “misbranded” if “its labeling is false or misleading in any particular.” *See* 410 ILCS 620/11(a).

4. By misrepresenting the key ingredients in its products, Defendants engaged, and still engage, in business practices that are unlawful, unfair, and deceptive because consumers reasonably rely on Defendants’ material misrepresentations to their detriment.

PARTIES

5. Plaintiff DAN LANG (“Lang”) is a natural person and resident and citizen of Illinois.

6. Defendant ALBERSTONS COMPANIES, INC. (“Alberstons”) is an Idaho corporation, with its principal place of business located at 250 Parkcenter Blvd, Boise, Idaho, and organized under the laws of the State of Idaho.

7. Alberstons operates a chain of grocery stores, doing business under various names, including Jewel-Osco, Safeway, Vons, and Albertsons (collectively, “Albertsons stores”). There are hundreds of Albertsons store locations throughout the United States, including in Illinois.

8. Defendant SUPERVALU, INC. (“Supervalu”) is a Minnesota corporation, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota.

9. Supervalu owns and operates a chain of grocery stores, doing business under various names, including Cub Foods, Farm Fresh, Shop N’ Save, Shoppers, and Save-A-Lot (collectively, “Supervalu stores”). Supervalu manufactures, produces, distributes, advertises and sells the “Essential Everyday” brand of products, including the Product at Supervalu stores, including in the state of Illinois.

JURISDICTION AND VENUE

10. Jurisdiction over Defendants is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this state), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this state), section 2-209(b)(4) (corporation doing business within this state), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

11. Venue is proper in this County, pursuant to 735 ILCS 5/2-101, because this is the county in which a substantial portion of the transactions and occurrences relevant to this action took place. Venue is also proper in this County, pursuant to 735 ILCS 5/2-102, because Defendants are doing business in Cook County, Illinois.

FACTUAL ALLEGATIONS

Defendants' Deceptive and Unfair Business Practices

12. Defendants develop, manufacture, distribute, sell, and advertise the Product nationwide, including in the state of Illinois.

13. Defendants advertise and sell the Product at Albertsons stores and Supervalu stores throughout the United States, including in Illinois.

14. Defendants advertise, market, and represent that the Product contains "100%" Parmesan cheese. Consumers reasonably rely on Defendants' statements, representations, and material omissions on the Product's label and believe that they are purchasing a product that consists entirely of Parmesan cheese, and contains no other substances, substitutes, adulterants, or fillers in the container. These statements, representations, and omissions are uniform on every Product label.

15. However, independent testing shows that the Product is not, in fact, “100%” Parmesan cheese, but rather it contains a significant amount of other substances. Testing shows that at least 8.8% of the purportedly “100%” Parmesan cheese consists of cellulose, a filler and anti-clumping agent made from wood pulp.¹

16. Defendants failed to disclose that the Product contains substantially and materially less than “100%” Parmesan cheese and that the Product contains at least 8.8% non-Parmesan cheese substances.

17. Because the Product does not contain 100% Parmesan cheese, the Product’s labeling is false and misleading, the Product is misbranded under state and federal law. *See* 21 U.S.C. § 343(a)(1); 410 ILCS 620/11(a).

18. Defendants knew that the Product did not consist of 100% Parmesan cheese as represented and that at least 8.8% of the Product consisted of substitutes, fillers, and other ingredients. Defendants knew that their representations regarding the Product were false.

19. Defendants misrepresented the contents of the Product offered to consumers, and omitted the truth of the actual contents in the Product, with the intent to deceive consumers—including Plaintiff and Class members—into purchasing the Product or paying more for the Product than they otherwise would, and thereby make a profit at Plaintiff’s and Class members’ expense.

20. In purchasing the Product, Plaintiff and Class members reasonably expected that the contents of the Product would contain “100%” Parmesan cheese, without any other substances, substitutes or fillers.

¹ *The Parmesan Cheese You Sprinkle on Your Penne Could be Wood*, Lydia Mulvany, BLOOMBERG, February 16, 2006, available at: <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>.

21. Accordingly, Plaintiff and members of the Class have been harmed because they would not have purchased the Product, or they would have paid less for it, had they known the truth of Defendants' misrepresentations.

Facts Relevant to Plaintiff

22. Plaintiff purchased the Product several times, as recently as early 2016 when Plaintiff purchased the Product at a Jewel-Osco store in Illinois.

23. Before deciding to purchase the Product, Plaintiff searched for Parmesan cheese that did not contain fillers or artificial preservatives. Plaintiff viewed and understood Defendants' representations on the Product.

24. In reliance upon Defendants' misrepresentations and omissions described above, Plaintiff purchased the Product for personal use.

25. Because the Product was labeled as containing "100%" Parmesan cheese, Plaintiff reasonably believed that the Product, in fact, consisted only of Parmesan cheese.

26. Upon information and belief, the Product purchased by Plaintiff did not contain "100%" Parmesan cheese, but instead contained at least 8.8% substitutes, fillers, or other ingredients.

27. Had Plaintiff known that the Product contained at least 8.8% substitutes, fillers, or other ingredients, he would not have purchased the product, or he would have paid substantially less for it. He received a product that was worth less than what he paid.

28. Plaintiff suffered injuries in fact as a result of Defendants' deceptive and unfair conduct, including the amount of money he paid to purchase the Product.

CLASS ALLEGATIONS

29. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801, on behalf of a nationwide class of similarly situated individuals and entities (“the Class”), defined as follows:

All persons who purchased “Essential Everyday 100% Grated Parmesan Cheese” in the United States.

Excluded from the Class are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

30. Plaintiff also brings this action pursuant to Fed. R. Civ. P. Rule 23, on behalf of a subclass of similarly situated individuals and entities (“the Illinois Subclass”), defined as follows:

All persons who purchased “Essential Everyday 100% Grated Parmesan Cheese” in Illinois.

Excluded from the Illinois Subclass are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Illinois Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

31. **Numerosity:** Upon information and belief, the Class and Illinois Subclass each comprise thousands of consumers, and is so numerous that joinder of all members of the Class and Illinois Subclass is impracticable. While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiff believes there are thousands of Class and Illinois Subclass members based upon the facts that Albertsons and Supervalu are two

of the largest food retailers in the United States.² Further, Supervalu distributes the Product to hundreds of stores across the United States, including Jewel-Osco stores.³ In fact, Jewel-Osco is one of the largest grocery store chains in Illinois—with over 185 stores throughout Illinois, Indiana, and Iowa.⁴ Therefore, it is likely that there are thousands of Class and Illinois Subclass members. Class members can be easily identified through Defendants’ records or by other means.

32. **Commonality and Predominance:** There are several questions of law and fact common to the claims of the Plaintiff and members of the putative Class, which predominate over any individual issues, including:

- a. Whether Defendants represented that the Product contains “100%” Parmesan cheese;
- b. Whether the Product contains less than “100%” Parmesan cheese;
- c. Whether Defendants made false and misleading representations to the Class concerning the Product;
- d. Whether Defendants failed to inform the Class that the Product was not entirely comprised of Parmesan cheese;
- e. Whether Defendants’ conduct constitutes a breach of express warranty;
- f. Whether Defendants’ conduct constitutes a breach of the implied warranty of merchantability;
- g. Whether Defendants violated the Illinois Food, Drug, and Cosmetic Act, 410 ILCS 620/1, *et seq.*;
- h. Whether Defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*;

² See *About Us*, ALBERTSONS, <http://www.albertsons.com/our-company/traditions-history> (last accessed March 11, 2016); *About Supervalu*, SUPERVALU, <http://www.supervalu.com/about.html> (last accessed March 11, 2016).

³ See *About Supervalu*, *supra* note 2.

⁴ *Our Story*, JEWEL-OSCO, <http://www.jewelosco.com/our-company/traditions-history/> (last accessed March 11, 2016).

- i. Whether Defendants violated the Consumer Fraud Acts of the fifty states;
- j. Whether Defendants' conduct constitutes fraud;
- k. Whether Defendants' conduct constitutes intentional misrepresentation;
- l. Whether Defendants' conduct constitutes negligent misrepresentation;
- m. Whether Defendants were unjustly enriched as a result of their conduct;
and
- n. Whether, and to what extent, Plaintiff and members of the Class were damaged as a result of Defendants' conduct alleged herein.

33. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues. Plaintiff and each of the Class members purchased the Product during the time period relevant to this action. Defendants' aforementioned misrepresentations and omissions were uniformly made to Plaintiff and all Class members.

34. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

35. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiff's claims are manageable.

36. Unless a class is certified, Defendants will retain monies received as a result of its conduct that was wrongfully taken from Plaintiff and Class members. Unless an injunction is

issued, Defendants will continue to commit the violations alleged, and the members of the proposed Class and the general public will continue to be misled.

37. Defendants have acted and refused to act on grounds generally applicable to the proposed Class, making appropriate final injunctive relief with respect to the proposed Class as a whole.

COUNT I
(on Behalf of the Illinois Subclass)
Violation of the Illinois Food, Drug and Cosmetic Act
(410 ILCS 620/1, *et seq.*)

38. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-37 with the same force and effect as though fully set forth herein.

39. At all relevant times, the IFDCA was in full force and effect.

40. The Product's labeling is false or misleading in any particular, and is therefore misbranded pursuant to 410 ILCS 620/11(a), because the Product's label expressly represents the Product consists of "100%" Parmesan cheese when, in fact, the Product contained at least 8.8% substitutes, fillers, or other ingredients.

41. The IFDCA prohibits "the manufacture, sale or delivery, holding or offering for sale any food, drug, device or cosmetic that is adulterated or misbranded." 410 ILCS 620/3.1.

42. The IFDCA prohibits "misbranding of any food, drug, device or cosmetic." 410 ILCS 620/3.2.

43. The IFDCA prohibits "the dissemination of any false advertisement." 410 ILCS 620/3.5.

44. Defendants violated the IFDCA by misbranding the Product, by manufacturing and selling the Product that was misbranded, and by disseminating false and misleading

advertisements about the product, including the false and misleading statements that the Product contains “100%” Parmesan cheese.

45. Defendants violated the IFDCA with the intent to defraud or mislead consumers, including Plaintiff and Class members.

46. Plaintiff and Class members reasonably relied on Defendants’ misrepresentations that the Product consisted on “100%” Parmesan cheese in making the decision to purchase the Product.

47. Acting as reasonable consumers, Plaintiff and Class members would not have purchased the Product, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

48. Plaintiff and members of the Class were damaged as a direct result of Defendants’ violation of the IFDCA.

49. “A private cause of action is found to exist under a statute where: (1) the plaintiff falls within the class of persons sought to be protected; (2) the plaintiff’s injury is one intended to be prevented; (3) the cause of action is consistent with the underlying purpose of the statute; and (4) the private cause of action is necessary to effectuate the purpose of the statute, *i.e.*, a civil remedy is needed.” *Reuben H. Donnelley Corp. v. Brauer*, 275 Ill.App.3d 300, 311 (1st Dist. 1995).

50. Plaintiff and Class members fall within the class of persons sought to be protected by the IFDCA because they unknowingly purchased misbranded food as a result of the misrepresentations on the Product’s label. The IFDCA was designed to regulate the manner in which food, drug, and cosmetics could be manufactured, prepared, advertised, and sold to consumers. Specifically, section 620/11 of the IFDCA was designed to prohibit food

manufacturers and sellers from mislabeling food products such that they are misleading to consumers. Misbranded food is prohibited under the IFDCA less consumers, such as Plaintiff and Class members, fall victim to the misrepresentations on the food's labeling.

51. Plaintiff and Class members' common injury is one intended to be prevented by the IFDCA. Section 620/11 of the IFDCA prohibits food manufacturers and sellers from mislabeling food products such that they are misleading to consumers in order to prevent consumers from buying food products because they reasonably believe false representations about those food products. Plaintiff and Class members reasonably believed Defendants' misrepresentations that the Product consisted on "100%" Parmesan cheese, and they would not have purchased the Product, or would have paid less for it, had they known the truth.

52. Granting Plaintiff and Class members a private right of action under the IFDCA is consistent with the underlying purpose of the IFDCA. The underlying purpose of section 620/11 of the IFDCA is to prevent consumers from being misled by false or misleading food labels. Allowing Defendants to be held liable for their deceptive conduct to Plaintiff and Class members who reasonably relied on their misrepresentations is consistent with that purpose.

53. Granting Plaintiff and Class members a private right of action under the IFDCA is necessary to effectuate the purpose of the IFDCA because the statute would be rendered meaningless if it could not be enforced. There would be no incentive keeping food manufacturers and sellers from misrepresenting food products to consumers if they could not be held liable to consumers for those misrepresentations.

54. Defendants' misbranding of the Product in violation of the IFDCA violates public policy because Defendants made material misrepresentations to consumers with the intent that

consumers, including Plaintiff and Class members, rely on those misrepresentations to their detriment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- E. Awarding Plaintiff and the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

(on Behalf of the Illinois Subclass)

**Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS 505/1, *et seq.*)**

55. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-37 with the same force and effect as though fully set forth herein.

56. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

57. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS 505/2.

58. The ICFA applies to Defendants’ acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

59. Each Defendant is a “person,” as defined by 815 ILCS 505/1(c).

60. Plaintiff and each member of the Class are “consumers,” as defined by 815 ILCS 505/1(e), because they purchased the Product for personal use.

61. The Product is “merchandise,” as defined by 815 ILCS 505/1(b).

62. Defendants made false and fraudulent statements, and misrepresented material facts, regarding their products sold to consumers, including the misrepresentation that the Product consists of “100%” Parmesan cheese.

63. Defendants omitted material facts regarding their products sold to consumers, including the fact that the Product consists of at least 8.8% substitutes, fillers, or other ingredients.

64. Defendants’ misrepresentations and omissions regarding the Product constitute deceptive and unfair acts or practices prohibited by the ICFA.

65. Defendants’ misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

66. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of the Product.

67. Defendants' aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

68. Defendants' aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the IFDCA.

69. Defendants intended that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing the Product.

70. Plaintiff and Class members reasonably relied on Defendant's misrepresentations and omissions when they purchased the Product.

71. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Product, they would have declined to purchase the Product, or they would have paid less for it.

72. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Product which, in fact, did not consist of 100% Parmesan cheese as represented.

73. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the Product because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions.

74. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for the Product that does not, in fact, consist of 100% Parmesan cheese as represented.

75. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased the Product, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Illinois Subclass and against Defendants;
- D. Enjoining Defendants from making false representations and omissions concerning the Product that will be sold to customers;
- E. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- F. Awarding Plaintiff and the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
(on Behalf of the Nationwide Class)
**Violation of the Consumer Fraud and Deceptive Trade
Practices Acts of the Various States and District of Columbia**

76. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

77. Plaintiff brings this Count individually, and on behalf of all similarly situated residents of each of the 50 states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8-19-1, *et seq.*;
- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, *et seq.*;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, *et seq.*;
- e. the California Unfair Competition Law, Bus. & Prof. Code §§17200, *et seq.* and 17500 *et seq.*;
- f. the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*;
- g. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- h. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;
- i. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- j. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- k. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- l. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- m. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;

- n. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- o. the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- p. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- q. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- r. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- s. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- t. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- u. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- v. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- w. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- x. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- y. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- z. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- aa. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- bb. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- cc. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- dd. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- ee. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ff. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- gg. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;

- hh. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- ii. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- jj. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- kk. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- ll. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;
- mm. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- nn. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- oo. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- pp. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- qq. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- rr. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- ss. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- tt. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- uu. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- vv. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- ww. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- xx. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- yy. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- zz. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

78. The Product is a consumer good.
79. Defendants engaged, and still engage, in unfair or deceptive acts or practices when Defendants misrepresented and continue to misrepresent material facts regarding the Product sold to consumers, including the misrepresentation that the Product consists of 100% Parmesan cheese.
80. Defendants omitted material facts regarding the Product sold to consumers, including the fact that at least 8.8% of the Product consists of substitutes, fillers, or other ingredients.
81. Defendants' misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.
82. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of the Product to Plaintiff and Class members.
83. Defendants' aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.
84. Defendants' aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the IFDCA.
85. Defendants intended, and still intend, that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing the Product.
86. Plaintiff and Class members reasonably relied on Defendants' misrepresentations and omissions when they purchased the Product.

87. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Product, they would have declined to purchase the Product, or they would have paid less for it.

88. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Product, which was misrepresented as consisting of 100% Parmesan cheese.

89. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the Product that was significantly mislabeled because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions.

90. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for the Product that does not consist of 100% Parmesan cheese as represented.

91. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased the Product, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his undersigned counsel as Class Counsel;

- C. Entering judgment in favor of Plaintiff and the Class and against Defendants;
- D. Enjoining Defendants from making false representations and omissions concerning the Product that will be sold to customers;
- E. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained, plus punitive damages;
- F. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV
(on Behalf of the Nationwide Class and the Illinois Subclass)
Common Law Fraud

92. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

93. The elements of a cause of action for fraud are: “(1) a false statement of material fact; (2) defendant’s knowledge that the statement was false; (3) defendant’s intent that the statement induce the plaintiff to act; (4) plaintiff’s reliance upon the truth of the statement; and (5) plaintiff’s damages resulting from reliance on the statement.” *See, e.g., Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 496 (1996) (citing *Bd. of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill.2d 428, 452 (1989)).

94. Defendants made false statements of material fact through its advertising for the Product. Defendants misrepresented, and continue to misrepresent, that the Product consists of “100%” Parmesan cheese, when, in fact, the Product contains at least 8.8% substitutes, fillers, or other ingredients.

95. Defendants also omitted material facts through its advertising for the Product. Defendants omitted, and continue to omit, the fact that at least 8.8% of the Product consists of substitutes, fillers, or other ingredients that are not Parmesan cheese.

96. The facts that the Product does not contain 100% Parmesan cheese and the fact that 8.8% of the Product consists of substitutes, fillers, or other ingredients are material facts that Defendants have falsely represented and actively concealed.

97. Defendants knew that the Product is comprised of at least 8.8% substitutes, fillers, or other ingredients and is not, in fact, “100%” Parmesan cheese as represented. Defendants’ misrepresentations were made with scienter.

98. Defendants affirmatively misrepresented and actively concealed material facts regarding the Product with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase the Product.

99. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Product, or they would have paid less for it.

100. It was reasonable for Plaintiff and the Class to rely on Defendants’ misrepresentations and omissions and believe that the Product consisted of 100% Parmesan cheese.

101. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Product which did not consist of “100%” Parmesan cheese as represented.

102. As a direct and proximate result of Defendants’ fraud, Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased

the Product, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V

(on Behalf of the Nationwide Class and the Illinois Subclass) Fraudulent Misrepresentation

103. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

104. To succeed on a claim of fraudulent misrepresentation, a plaintiff "must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from

such reliance.” *See, e.g., Doe v. Dilling*, 228 Ill.2d 324, 342-43 (2008) (internal citations omitted).

105. Defendants made false statements of material fact through their advertising for the Product. Defendants misrepresented, and continue to misrepresent, that the Product consists of “100%” Parmesan cheese, when, in fact, the Product contains at least 8.8% substitutes, fillers, or other ingredients.

106. Defendants also omitted material facts through their advertising for the Product. Defendants omitted, and continue to omit, the fact that at least 8.8% of the Product consists of substitutes, fillers, or other ingredients that are not Parmesan cheese.

107. The facts that the Product does not contain 100% Parmesan cheese and the fact that 8.8% of the Product consists of substitutes, fillers, or other ingredients are material facts that Defendants have falsely represented and actively concealed.

108. Defendants knew that the Product is comprised of at least 8.8% substitutes, fillers, or other ingredients and is not, in fact, “100%” Parmesan cheese as represented. Defendants’ misrepresentations were made with scienter.

109. Defendants affirmatively misrepresented and actively concealed material facts regarding the Product with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase the Product.

110. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Product, or they had would have paid less for it.

111. It was reasonable for Plaintiff and the Class to rely on Defendants' misrepresentations and omissions and believe that the Product consisted of 100% Parmesan cheese.

112. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Product which did not consist of “100%” Parmesan cheese as represented.

113. As a direct and proximate result of Defendants' fraud, Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased the Product, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VI
(on Behalf of the Nationwide Class and the Illinois Subclass)
Breach of Express Warranty

114. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

115. At all relevant times there was in full force and effect the Illinois Commercial Code provision regulating express warranties, codified as 810 ILCS 5/2-313.

116. To succeed on a claim for breach of an express warranty, a plaintiff must show: (1) “the terms of the warranty,” (2) “the failure of some warranted part,” (3) “a demand upon the defendant to perform under the terms of the warranty,” (4) “a failure of the defendant to do so,” (5) “a compliance with the terms of the warranty by the plaintiff,” and (6) “damages measured by the terms of the warranty.” *See, e.g., Hasek v. DaimlerChrysler Corp.*, 319 Ill.App.3d 780, 793 (1st Dist. 2001).

117. However, a plaintiff is not required to provide the seller with notice of a defect if the seller has actual knowledge of the product’s particular defect. *See, e.g., Connick v. Suzuki Motor Co., Ltd.*, 174 Ill.2d 482, 492 (1996).

118. “It is not necessary to the creation of an express warranty that the seller use formal words such as ‘warrant’ or ‘guarantee’ or that he have a specific intention to make a warranty[.]” 810 ILCS 5/2-313(2).

119. By packaging, labeling, and selling the Product, Defendants, as the manufacturers, marketers, distributors, and sellers of the Product, expressly warranted that the Product consisted of “100%” Parmesan cheese.

120. Defendants’ representations, affirmations of fact, and promises related to the Product constitute an express warranty because the representations, affirmations, and promises

became a part of the basis of the bargain with Plaintiff and members of the Class that the Product consists of 100% Parmesan cheese.

121. Defendants breached their express warranty because the Product does not consist of 100% Parmesan cheese as warranted. At least 8.8% of the Product is comprised of substitutes, fillers, and other ingredients.

122. Plaintiff and members of the Class complied with the terms of the warranty because they paid money in exchange for the Product. Neither Plaintiff nor members of the Class misused the Product or contributed to its deficiency.

123. Plaintiff and members of the Class were not required to provide Defendants with notice that the Product is defective because Defendants had actual knowledge that the Product did not consist of 100% Parmesan cheese as warranted.

124. Defendants had actual knowledge that the Product does not consist of 100% Parmesan cheese as warranted because Defendants were responsible for manufacturing, packaging, and marketing the Product.

125. Plaintiff and members of the Class relied on Defendants' warranty that the Product consisted of 100% Parmesan cheese when they purchased the Product. Because Defendants packaged and labeled the Product, as "Essential Everyday 100% Grated Parmesan Cheese," it was reasonable for Plaintiff and members of the Class to believe that the Product consisted of 100% Parmesan cheese and to rely on that belief when they purchased the Product.

126. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented warranties, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Product, or they had would have paid less for it.

127. Plaintiff and the members of the Class did not receive the Product as warranted. The Product they purchased was worth substantially less than what they were promised and expected, to wit: a Parmesan cheese food product consisting of 100% Parmesan cheese and not containing any substitutes, fillers, or other ingredients.

128. As a direct and proximate result of Defendants' breach of warranty, Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased the Product, or would have paid substantially less for it, had they known the truth, and they received a product that was worth less than the warranted condition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VII
(on Behalf of the Nationwide Class and the Illinois Subclass)
Breach of Implied Warranty of Merchantability

129. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

130. At all relevant times there was in full force an effect a provision of the Illinois Commercial Code governing implied warranties, codified as 810 ILCS 5/2-314 and 5/2-315.

131. Defendants, as the manufacturers, marketers, distributors, and/or sellers of the Product are merchants.

132. The implied warranty of merchantability requires that goods “[a]re adequately contained, packaged, and labeled as the agreement may require[.]” 810 ILCS 5/2-314(2)(e). The implied warranty of merchantability also requires that goods “[c]onform to the promises or affirmations of fact made on the container or label if any.” 810 ILCS 5/2-314(2)(f).

133. The Product is not adequately contained, packaged, and labeled because it is packaged and labeled as “Essential Everyday 100% Grated Parmesan Cheese,” but the Product does not consist of 100% Parmesan cheese as warranted.

134. The Product does not conform to the promises and affirmations of facts made on its container and label because it does not consist of 100% Parmesan cheese as its packaging and labeling warrants. The Product consists of at least 8.8% substitutes, fillers, or other ingredients.

135. Defendants impliedly warranted that the Product consists of 100% Parmesan cheese and does not contain any substitutes, fillers, or other ingredients.

136. Defendants had reason to know of the particular purpose of the Product because Defendants were responsible for the manufacturing, packaging, labeling, distribution, and sale of the Product.

137. Defendants breached the warranty of merchantability implied in the contract for sale of the Product because the Product does not consist of 100% Parmesan cheese, and the Product consists of at least 8.8% substitutes, fillers, and other ingredients.

138. Defendants knew that the Product would be purchased and used by Plaintiff and members of the Class without additional testing or measuring its quantity, consistency, or sufficiency.

139. Plaintiff and members of the Class relied on Defendants' ability to truthfully represent the quantity, capacity, and consistency of the Product when they purchased the Product.

140. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented warranties, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Product, or they would have paid less for it.

141. Plaintiff and the members of the Class did not receive the Product as warranted. The Product they purchased was worth substantially less than the product that they were promised and expected.

142. The Product was not altered by Plaintiff or any member of the Class.

143. The Product was defective and unfit for its intended purpose when it left the exclusive control of Defendants.

144. As a direct and proximate result of Defendants' breach of warranty Plaintiff and members of the Class suffered damages by purchasing the Product because they would not have purchased the Product, or would have paid substantially less for it, had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VIII

(on Behalf of the Nationwide Class and the Illinois Subclass) Unjust Enrichment

145. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-37 with the same force and effect as though fully set forth herein.

146. When a specific contract does not govern the relationship of the parties, and, therefore, no adequate remedy at law is applicable, an equitable remedy under a theory of unjust enrichment is available. *See, e.g., Guinn v. Hoskins Chevrolet*, 361 Ill.App.3d 575, 604 (1st Dist. 2005) (internal citations omitted).

147. Unjust enrichment "is a condition that may be brought about by unlawful or improper conduct as defined by law[.]" *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st

120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

148. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) “that the defendant has unjustly retained a benefit to the plaintiff’s detriment,” and (2) “that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience.” See, e.g., *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

149. Plaintiff and members of the Class paid a retail price for the Product believing that the Product they purchased consisted of 100% Parmesan cheese and did not contain any artificial fillers, substitutes, or preservatives. However, the Product purchased by Plaintiff and members of the Class does not consist of 100% Parmesan cheese as represented. The Product consists of at least 8.8% substitutes, fillers, and other ingredients.

150. Defendants have unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendants unlawfully acquired their profits for the Product appreciating and knowing that the Product purchased by Plaintiff and members of the Class did not consist of 100% Parmesan cheese as represented.

151. Defendants have acquired and retained money belonging to Plaintiff and the Class as a result of their wrongful conduct: misrepresenting that the Product consists of 100% Parmesan cheese when, in fact, it contains substitutes, fillers, and other ingredients. Each individual sale of the Product nets Defendants profit at the expense of consumers.

152. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and would not have purchased the Product, or would have paid

less for it, had they been aware of the truth, and they received a product that was worth less than what they paid.

153. Plaintiff and the members of the Class have suffered damages as a direct result of Defendants' conduct.

154. Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience because Defendants misled Plaintiff and the Class into falsely believing the Product consists of 100% Parmesan cheese in order to unjustly receive and retain a benefit.

155. Under the principles of equity, Defendants should not be allowed to keep the money belonging to Plaintiff and the members of the Class because Defendants have unjustly received it as a result of Defendants' unlawful actions described herein.

156. Plaintiff, individually and on behalf of the Class, seeks restitution for Defendants' unlawful conduct, as well as interest and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAN LANG, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;

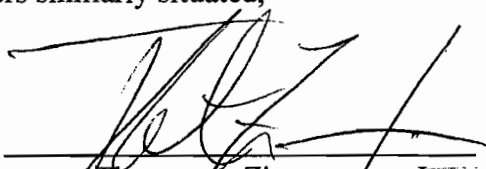
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff DAN LANG, individually, and on behalf of all others similarly situated,

By: _____


Thomas A. Zimmerman, Jr.

tom@attorneyzim.com

Amelia S. Newton

amy@attorneyzim.com

Jordan M. Rudnick

jordan@attorneyzim.com

Matthew C. De Re

matt@attorneyzim.com

Nickolas J. Hagman

nick@attorneyzim.com

Maebetty Kirby

maebetty@attorneyzim.com

ZIMMERMAN LAW OFFICES, P.C.

77 W. Washington Street, Suite 1220

Chicago, Illinois 60602

(312) 440-0020 telephone

(312) 440-4180 facsimile

www.attorneyzim.com

Firm ID No. 34418

Counsel for the Plaintiff and Putative Class