

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

<b>SHELDON SPECTOR,</b>	)	<b>CASE NO.</b>
<b>Individually and On Behalf of</b>	)	
<b>All Others Similarly Situated,</b>	)	
	)	<b>CLASS ACTION COMPLAINT</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>KRAFT HEINZ FOODS COMPANY,</b>	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
<b>Defendant.</b>	)	
	)	

**COMPLAINT**

Plaintiff Sheldon Spector (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges on personal knowledge as to all facts related to himself and upon information and belief (based upon the investigation of counsel) as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. Defendant, Kraft Heinz Foods Company (“Kraft” or “Defendant”), advertises, markets, and sells containers of its “100% Grated Parmesan Cheese” products (“Products”), which purport to be 100% Parmesan cheese but, based on independent laboratory testing, instead contain large amounts of fillers and additives. Specifically, testing has shown that at least 3.8 percent of the Products comprises cellulose, an anti-clumping agent derived from wood pulp.

2. Plaintiff and members of the Class (defined herein) and Illinois Subclass (defined herein) purchased Kraft’s “100%” Parmesan cheese Products because they were deceived into believing that the Products contained 100% Parmesan cheese, and only Parmesan cheese. Because Kraft’s Products contain significant amounts of other ingredients, they are, as a matter of fact, not 100% Parmesan cheese. Accordingly, Plaintiff and members of the Class have suffered injury resulting in an ascertainable monetary loss. Plaintiff and members of the class therefore seek

monetary, equitable and injunctive relief from Defendants' actions as provided by applicable law.

3. Plaintiff seeks relief in this action individually and on behalf of all purchasers of Kraft's "100% Grated Parmesan Cheese" products. Plaintiff alleges breach of express and implied warranties, negligent misrepresentation, fraud, and for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 § 1, *et seq.* ("ICFA").

4. Through this action, Plaintiff seeks injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief available to the Class as a result of Defendant's unlawful conduct.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and other costs, and there is minimal diversity because certain members of the Class and Defendant are citizens of different states, as required by 28 U.S.C. § 1332(d)(2).

6. This Court has personal jurisdiction over Defendant because Defendant is authorized to do business, and currently does business, in this District.

7. Venue is appropriate in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b) because Defendant has one of its headquarters in this District and engages in substantial business throughout this District.

### **THE PARTIES**

8. Plaintiff is, and at all times relevant to this action has been, a resident and citizen of Buffalo Grove, Illinois.

9. Defendant Kraft Heinz Foods Company is a Pennsylvania corporation with, at all times relevant to this action, headquarters in Pittsburgh, Pennsylvania, and/or Chicago, Illinois.

Kraft sold its Products through retail stores, the Internet, and through television and other advertisements, all of which led consumers to purchase the Products throughout the United States. Kraft knew, or should have known, that the representations made regarding the Products were false and misleading at the time that it began distributing them in the United States, including Illinois.

### **STATEMENT OF FACTS**

#### **Facts Common to Plaintiff and the Class**

10. Kraft advertises the Products as consisting of only a single ingredient: “100%” Parmesan cheese, selling the Products in tubes and other ready-to-serve packaging, in various weights and amounts. Kraft has used materially similar labels for the Products since at least as early as the 1980s.

#### **Sample labels as of 2016:**



**Label and advertising in 1994:**



**Label and advertising in 1990:**



11. Kraft has also promulgated a uniform print marketing and labeling campaign concerning the Products since at least as early as 1984, when such an advertisement depicted Kraft's same green label bearing the "100%" claim around what looks like a cylinder of Parmesan cheese:<sup>1</sup>



12. As seen above, for decades, the Products' labels all carried and continue to carry the same "100% Grated Parmesan Cheese" guarantee on materially similar green tubes and containers that have been only slightly modified over the years. Kraft intended for or should have known that the likely effect of its representation was for Plaintiff and other consumers to reasonably rely on Kraft's claim that the container consists of 100% Parmesan cheese.

<sup>1</sup> See [http://www.vintagepaperads.com/1984-Kraft-100-Grated-Parmesan-Cheese-Ad-Italian\\_p\\_116645.html](http://www.vintagepaperads.com/1984-Kraft-100-Grated-Parmesan-Cheese-Ad-Italian_p_116645.html) (last accessed March 2, 2016).

13. When purchasing and consuming the Products, Plaintiff and other members of the Class did in fact reasonably rely on the label and believed that the Products did consist of “100%” Parmesan cheese, to the exclusion of any other additives, fillers or alternative ingredients. Because the Products do in fact contain additives and fillers, Kraft’s “100%” claim is literally false and also materially misleading to Plaintiff and other members of the Class.

14. Independent testing illustrates that at least 3.8% of the Products are not Parmesan cheese, or even cheese at all. Instead, at least 3.8% of the Products are cellulose, an anti-clumping agent derived from wood chips.<sup>2</sup>

15. Kraft has not only extolled its own virtue of its “100%” Parmesan Products, but it has also criticized competitors for using other “fats and fillers” in their products. Kraft and its predecessors have claimed false superiority over other cheese products on the basis that its Products are “100% grated cheese” or “100% grated Parmesan.” See ¶¶ 10-11, *supra*. Television commercials from at least as early as 1990 show that the Products have maintained substantially similar packaging and identical “100% grated Parmesan Cheese” claims throughout the recent history of the Products.<sup>3</sup> See ¶¶ 10-11, *supra*.

16. Such television commercials have also included claims stating, *inter alia*, “If you won’t settle for Parmesan cheese that isn’t 100 percent Parmesan...make sure you get one that is! Kraft Parmesan, it’s always 100 percent Parmesan, no fillers...Real Italian meals don’t begin without Kraft 100 percent grated Parmesan cheese. Now, you can eat.”<sup>4</sup>

17. As shown by the images herein, for more than 30 years, Kraft has consistently made, and continues to make, unlawful, false and misleading claims on its “100% grated Parmesan

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<sup>2</sup> See <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood> (last accessed March 2, 2016).

<sup>3</sup> See <https://www.youtube.com/watch?v=FIImRTxvVMk> (last accessed March 2, 2016).

<sup>4</sup> See <https://www.youtube.com/watch?v=4yQtdaRfNzg> (last accessed March 2, 2016).

Cheese” Products. These false claims are prohibited by Illinois consumer protection statutes and warranty laws which render these Products misbranded and unfit for sale in the United States.

**Plaintiff’s Experiences**

18. Plaintiff’s claims are based on the Products’ labels. Throughout the years, Plaintiff purchased the Products believing them to be 100% Parmesan cheese. Most recently, on or about February 2016, Plaintiff viewed the claims on the label of Products at a Walmart store in Wheeling, Illinois. In particular, Plaintiff recalls reading Kraft’s claims on the labels that the Products comprised “100% grated Parmesan Cheese.”

19. Plaintiff interpreted the “100%” claim to mean that the Products contained only Parmesan cheese, and no other additives, fillers, substitutes or alternative ingredients.

20. Plaintiff likewise interpreted the “100%” claim to mean that the Products were of higher quality than those of competitors that may not have contained “100%” grated Parmesan cheese, such that he was willing to pay more for the Products than the listed price of competitors’ cheese products.

21. As a result, the labels on the Products induced and convinced Plaintiff to purchase the Products instead of any other similar cheese products, to enjoy the benefits of a product with 100% Parmesan cheese.

22. In reliance on the label’s claims that the Products comprised “100%” grated Parmesan cheese, Plaintiff purchased the Products. *See* ¶ 18, *supra*.

23. Kraft, its predecessors, subsidiaries, affiliates, or its or their agents conceived, approved, used and otherwise made the “100%” grated Parmesan cheese claim on the Products. Reasonably relying on the claims made on the labeling of the Products, Plaintiff purchased the

Products. Plaintiff reasonably expected that the Products contained a single component, Parmesan cheese, as advertised and sold.

24. After consuming the Products, Plaintiff learned that the Products contained components other than Parmesan cheese, including ingredients derived from wood chips.

25. Plaintiff suffered actual damages and loss, in the amount of the total price of the Products purchased and/or the price premium of the Products, as a result of Kraft's improper actions described herein.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiff brings this action on behalf of himself and all others similarly situated United States consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of a class consisting of all persons who purchased the Products within the United States within the relevant statute of limitations period (the "Class").

27. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased the Products in Illinois within the relevant statute of limitations period (the "Illinois Subclass").

28. Specifically excluded from the Class and Illinois Subclass are: (a) Defendant, its officers, directors, agents, trustees, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities related to or affiliated with Defendant and/or its officers and or directors, or any of them; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of consuming the Products; (c) any person or entity who purchased the Products for purposes of resale or assignment; and (d) the Judge to whom this case is assigned.

29. **Numerosity/Impracticability of Joinder.** The members of the Class are so



numerous that joinder of all members is impracticable. Kraft sells millions of containers of the Products and makes them available for purchase in major supermarkets nationwide, including in Illinois. Accordingly, the proposed Class includes at least tens of thousands of members, such that the Class members are so numerous that their individual joinder herein is impracticable. The precise number and identities of Class members are unknown to Plaintiff at this time but can be ascertained by reviewing documents in Defendant's possession, custody, and control, or otherwise obtained through reasonable means. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Kraft, third party retailers and vendors.

30. **Typicality.** The representative Plaintiff's claims are typical of the claims of the members of the Class he seeks to represent. Plaintiff and all members of the Class purchased the Products at a premium price due to the same wrongful course of conduct, on the basis that the Products were superior to competitors' cheese products because the Products were composed of 100% grated Parmesan cheese while other cheese products had additional ingredients. Likewise, Plaintiff and the Class were both exposed to Kraft's false, misleading and misbranded labels, both purchased the Products, and both suffered losses as a result of that purchase. Accordingly, Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

31. **Commonality and Predominance.** Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendant engaged in marketing and advertising conduct that was likely to deceive consumers by omitting, concealing, suppressing or materially

misrepresenting the true content of Kraft's "100%" grated Parmesan cheese Products;

- b. Whether Defendant's marketing and advertising conduct regarding the Products did in fact deceive consumers;
- c. What the fair market value of Defendant's Products would have been during the Class Period but for Defendant's omissions, concealments, suppressions and material misrepresentations regarding the true content of the Products;
- d. Whether Defendant was able to sell the Products at a price higher than fair market value during the Class Period due to its omissions, concealments, suppressions and material misrepresentations of fact regarding the Products;
- e. Whether Defendant's practices of falsely labeling the Products as "100% grated Parmesan cheese" constituted unfair acts or practices in violation of the ICFA;
- f. Whether Defendant violated the ICFA through its acts or practices in connection with the Products;
- g. Whether Defendant committed a breach of express or implied warranty, negligent misrepresentation or fraud as a result of its misconduct;
- h. Whether, as a result of Defendant's misconduct, Plaintiff and the Class are entitled to equitable relief and other relief, and, if so, the nature of such relief; and
- i. Whether Plaintiff and the members of the Class have sustained loss and damages as a result of Defendant's acts and omissions, and the proper measure thereof.

32. **Adequacy.** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation and intends to prosecute this action vigorously. Plaintiff is a

member of the Class and does not have interests antagonistic to, or in conflict with, the other members of the Class.

33. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since, among other things, individual litigation and/or joinder of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by individual Class members as a result of Defendant's wrongful conduct alleged herein are too small to warrant the expense of individual litigation. The likelihood of individual Class members prosecuting their own separate claims is remote and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions and individualized litigation would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff does not foresee any difficulty in the management of this litigation that would preclude its maintenance as a class action.

34. Adequate notice can be given to Class members directly using information maintained in Defendant's records, or through notice by publication.

35. The Class may be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendant has acted on grounds generally applicable to the putative Class members, thereby making final injunctive relief and corresponding declaratory relief appropriate with respect to the claims raised by the Class.

36. The Class may be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil

Procedure because questions of law and fact common to Class members will predominate over questions affecting individual members, and a class action is superior to all other methods for fairly and efficiently adjudicating the controversy and causes of action described in this Complaint.

**FIRST CAUSE OF ACTION**

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.***

37. Plaintiff incorporates by reference each and every preceding paragraph as though fully set forth herein.

38. Plaintiff brings this First Cause of Action individually and on behalf of the proposed Illinois Subclass.

39. In Illinois, the Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*, like the consumer fraud acts of numerous other states across the nation, prohibits deceptive acts and practices in the sale of such products as Kraft's Products.

40. Plaintiff and the Illinois Subclass were injured by Defendant's deceptive misrepresentations, concealments, suppressions and omissions.

41. These misrepresentations, concealments, suppressions and omissions were material and deceived Plaintiff and the Illinois Subclass.

42. Defendant does business in Illinois, maintains offices and a significant business presence in Illinois, sells and distributes the Products in Illinois, and engaged in deceptive acts and practices in connection with the sale of their Products in Illinois and elsewhere in the United States.

43. The Products purchased by Plaintiff and the Illinois Subclass were "consumer items," as that term is defined under the ICFA.

44. Defendant misrepresented and deceptively concealed, suppressed and/or omitted the material information known to Defendant as set forth above concerning the Products, in

violation of Sec. 2 of the ICFA,<sup>5</sup> which has caused damage and injury to Plaintiff and the Illinois Subclass, in that (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein; (b) they paid a price premium for the Products due to Defendant's conduct; and (c) the Products did not have the characteristics or quantities as advertised.

45. Defendant's deceptive acts occurred in a course of conduct involving trade and commerce in Illinois and throughout the United States.

46. Defendant's deceptive acts proximately caused actual injury and damage to Plaintiff and the Illinois Subclass.

47. Defendants intended for Plaintiff and all Illinois Subclass members to rely on their deceptive acts.

48. The conduct of the Defendants constituted a consumer fraud under the ICFA.

## **SECOND CAUSE OF ACTION**

### **Breach of Express Warranty**

49. Plaintiff incorporates by reference the allegations contained in ¶¶ 1-36 as though fully set forth herein.

50. Plaintiff brings this Second Cause of Action individually and on behalf of the Class.

51. When advertising and selling the Products, Kraft issued an express warranty that the Products consisted of "100%" Parmesan cheese.

52. Kraft's affirmation of fact and promise on the Products' labels that the Products

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<sup>5</sup> See 815 ILCS 505/2 (stating that "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material...are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.")

consisted of “100%” Parmesan cheese became part of the basis of the bargain between Defendant on the one hand and Plaintiff and the Class on the other, thereby creating express warranties that the Products would conform to Kraft’s affirmations of fact, representations, promises and descriptions.

53. Kraft breached its express warranty because its “100% Grated Parmesan Cheese” Products do not in fact consist of 100 percent Parmesan cheese. Instead, the Products contain additional ingredients, including cellulose derived from wood chips, and other fillers.

54. Accordingly, the Products fail to meet the standard set forth by Kraft’s express warranty.

55. Plaintiff and the Class Members were injured as a direct and proximate result of Defendant’s breach because: (a) they would not have purchased the Products on the same terms absent Defendant’s illegal conduct as set forth herein, including that the Products contained components other than 100% Parmesan cheese; (b) they paid a price premium for the Products due to Defendant’s conduct; and (c) the Products did not have the characteristics or quantities as advertised and promised by Kraft’s own representations.

### **THIRD CAUSE OF ACTION**

#### **Breach of Implied Warranty of Merchantability**

56. Plaintiff incorporates by reference the allegations contained in ¶¶ 1-36 as though fully set forth herein.

57. Plaintiff brings this Third Cause of Action individually and on behalf of the Class.

58. Section 2-314 of the Uniform Commercial Code provides that, unless excluded or modified, a warranty that goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. To be “merchantable,” goods must, *inter*

*alia*, be “of even kind, quality and quantity within each unit and among all units” and “conform to the promise or affirmations of fact made on the container or label if any.”

59. Kraft, through its conduct set forth herein, in its sale, advertising and marketing of the Products, impliedly warranted that the Products consisted of 100 percent Parmesan cheese.

60. Kraft was a merchant with respect to the goods of this kind that were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and the Class an implied warranty that those goods were merchantable.

61. Kraft breached that implied warranty when selling and advertising the Products because the Products do not contain the “quality and quantity” of Parmesan cheese as impliedly warranted, and because the Products do not conform to the promises made on their labels, as set forth herein.

62. Due to Kraft’s conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Kraft to be merchantable. The Products that Plaintiff and the Class received did not conform to the promises and affirmations made on the container or label of the goods.

63. Plaintiff and the Class were injured as a direct and proximate result of Kraft’s breach because (a) they would not have purchased the Products on the same terms absent Defendant’s illegal conduct as set forth herein, including that the Products contained components other than 100% Parmesan cheese; (b) they paid a price premium for the Products due to Defendant’s conduct; and (c) the Products did not have the characteristics or quantities as impliedly warranted by Kraft’s own representations.

#### **FOURTH CAUSE OF ACTION**

##### **Negligent Misrepresentation**

64. Plaintiff incorporates by reference the allegations contained in ¶¶ 1-36 as though

fully set forth herein.

65. Plaintiff brings this Fourth Cause of Action individually and on behalf of the Class.

66. As set forth above, Kraft misrepresented that the Products contain “100%” Parmesan cheese when, in fact, they contain substantial amounts of additives.

67. When Kraft made these representations, it knew or should have known that these representations were false, or it alternatively made them without knowledge of their veracity.

68. Accordingly, Kraft at least negligently misrepresented and/or negligently omitted material facts about the Products.

69. Plaintiff and the Class reasonably relied upon the negligent misrepresentations and omissions, effectuating Kraft’s intended effect to induce Plaintiff and the Class Members to purchase the Products.

70. Plaintiff and the Class actually were induced to purchase the Products by Kraft’s misrepresentations and omissions. Had Plaintiff and the Class known that the Products did not contain 100% Parmesan cheese, they would not have purchased the Products, or would not have paid the price that they actually paid to purchase the Products.

71. Kraft’s negligent actions caused Plaintiff and the Class to suffer injuries, for which they are entitled to damages and other legal and equitable relief.

#### **FIFTH CAUSE OF ACTION**

##### **Fraud**

72. Plaintiff incorporates by reference the allegations contained in ¶¶ 1-36 as though fully set forth herein.

73. Plaintiff brings this Fifth Cause of Action individually and on behalf of the Class.

74. As set forth above, Kraft provided Plaintiff and the Class with false or misleading



material information and failed to disclose material facts about the Products, including but not limited to the fact that the Products did not consist of “100%” Parmesan cheese but instead contained additional components.

75. Kraft made these misrepresentations and omissions with knowledge of their falsehood.

76. Plaintiff and the Class reasonably relied upon Kraft’s misrepresentations and omissions, which were intended to induce and actually did induce Plaintiff and the Class to purchase the Products, or to pay more for the Products than they would have had they known that Products did not contain 100% grated Parmesan cheese.

77. Kraft’s fraudulent actions caused Plaintiff and the Class to suffer injury, for which they are entitled to damages and other legal and equitable relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the members of the Class defined herein, prays for judgment and relief as follows as appropriate for the above causes of action:

- A. That the Court enter an order certifying the Class and Illinois Subclass under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class and Illinois Subclass, and naming Plaintiff’s attorneys as Class Counsel to represent the Class and Illinois Subclass members;
- B. That the Court enter an Order declaring that Defendant’s conduct violates the statute referenced herein;
- C. That the Court enter an Order against Defendant awarding to Plaintiff and the Class and/or the Illinois Subclass compensatory/actual damages, prejudgment interest on

all amounts awarded, and such other monetary relief as the Court deems appropriate;

- D. That the Court enter an Order against Defendant to disgorge all profits unjustly received through their sale of Products to Plaintiff and the putative Class and/or Illinois Subclass members;
- E. That the Court enter an Order for restitution and all other forms of equitable monetary relief;
- F. That the Court enter an Order granting declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein;
- G. Reasonable attorneys' fees, expert fees and costs of the Class and Illinois Subclass; and
- H. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

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

Dated: March 15, 2016

Respectfully submitted,

**POMERANTZ LLP**

*/s/ Jayne A. Goldstein* \_\_\_\_\_

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