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10
11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**

14 GEORGE BRAHLER, on behalf of himself
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 KRAFT HEINZ FOODS COMPANY,

19 Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) BREACH OF EXPRESS WARRANTY;
- (2) BREACH OF IMPLIED WARRANTY;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) UNJUST ENRICHMENT;
- (5) VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW;
- (6) VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT;
- (7) VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW;
- (8) VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT.

JURY TRIAL DEMANDED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. JURISDICTION 1

II. INTRODUCTION 2

III. PARTIES 3

IV. FACTUAL BACKGROUND 4

V. SUBSTANTIVE ALLEGATIONS 7

VI. CLASS ALLEGATIONS 11

 A. The Classes 11

 1. Numerosity: Fed. R. Civ. P. 23(a)(1)..... 11

 2. Commonality: Fed. R. Civ. P. 23(a)(2)..... 12

 3. Typicality: Fed. R. Civ. P. 23(a)(3). 13

 4. Adequacy: Fed. R. Civ. P. 23(a)(4). 13

 5. The pre-requisites to maintaining a class action for injunctive relief
 apparent: Fed. R. Civ. P. 23(b)(2)..... 13

 6. Common questions predominate, and the class action device is
 superior, making certification appropriate: Fed. R. Civ. P. 23(b)(3)..... 14

VII. CLAIMS FOR RELIEF 14

 COUNT I BREACH OF EXPRESS WARRANTY (ON BEHALF OF THE
 NATIONAL CLASS) 14

 COUNT II BREACH OF IMPLIED WARRANTY (ON BEHALF OF THE
 NATIONAL CLASS) 15

 COUNT III NEGLIGENT MISREPRESENTATION (ON BEHALF OF THE
 NATIONAL CLASS) 16

 COUNT IV UNJUST ENRICHMENT AND COMMON LAW RESTITUTION
 (ON BEHALF OF THE NATIONAL CLASS)..... 17

 COUNT V VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW
 (CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*) (ON BEHALF OF
 THE CALIFORNIA CLASS)..... 18

 COUNT VI VIOLATION OF THE CALIFORNIA CONSUMER LEGAL
 REMEDIES ACT (CAL. CIV. CODE §§ 1750, *ET SEQ.*) (ON BEHALF
 OF THE CALIFORNIA CLASS)..... 20

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2
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COUNT VII VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION
LAW (CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*) (ON BEHALF
OF THE CALIFORNIA CLASS)..... 22

COUNT VIII VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. §§ 2301, *ET SEQ.*) (ON BEHALF OF THE NATIONAL
CLASS)..... 23

VIII. PRAYER FOR RELIEF 25

IX. DEMAND FOR JURY TRIAL 26

1 Plaintiff George Brahler (“Plaintiff”), on behalf of himself and all others similarly situated,
2 brings this action against Defendant Kraft Heinz Foods Company (“Kraft”) to recover monetary
3 damages, injunctive relief, and other remedies for violations of California and federal law. Plaintiff
4 makes the following allegations based on the investigation of counsel and on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which is based on personal knowledge.
6

7 I. JURISDICTION

8 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A)
9 because Plaintiff, as well as most members of the putative Class, are citizens of a different state than
10 the Defendant, and the aggregate amount in controversy exceeds five million dollars, exclusive of
11 interest and costs.

12 2. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because
13 Plaintiff’s Magnuson-Moss Warranty Act, 15 U.S.C. § 2310, claim arises under a law of the United
14 States.
15

16 3. This Court has supplemental jurisdiction over the state law claims in this action
17 pursuant to 28 U.S.C. § 1367.

18 4. This Court has personal jurisdiction over Defendant pursuant to California Code of
19 Civil Procedure (“Cal. Code Civ. Proc.”) § 410.10 and because a substantial portion of the wrongdoing
20 alleged in this Complaint took place in the State of California; Kraft is authorized to do business in the
21 State of California; and Kraft has sufficient minimum contacts with the State of California and/or
22 otherwise intentionally avails itself of the markets in the State of California through the production,
23 promotion, marketing, and sale of products and services in this State to render the exercise of
24 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
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1 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part
 2 of the events giving rise to the claims herein, including the production and purchase of the cheese
 3 products in question, occurred within this District.

4
 5 **II. INTRODUCTION**

6 6. Defendant Kraft has advertised and sold millions of containers of its “100% GRATED
 7 PARMESAN Cheese” products (“Product”). On those containers, and in other advertising, Kraft
 8 prominently and in no uncertain terms represents to consumers one trait with regard to its grated
 9 parmesan cheese: It is “100% Grated Parmesan Cheese.”



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 20 7. But that representation is not true. Independent laboratory testing confirms that Kraft’s
 21 “100% parmesan cheese” products are comprised of at least 3.8 percent cellulose,¹ a filler and anti-
 22 clumping agent derived from wood pulp.

23
 24 8. Nevertheless, Defendant has made—and continues to make—false, fraudulent, and
 25 misleading claims on its food labels in violation of state and federal law.

26
 27 ¹ See, e.g., Lydia Mulvany, *The Parmesan Cheese You Sprinkle on Your Penne Could Be Wood*,
 28 Bloomberg (Feb. 16, 2016), <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>.

1 9. Plaintiff and members of the Class, as defined herein, are consumers who purchased
2 Kraft's "100% parmesan cheese" products because they were deceived into believing that the products
3 were, in fact, 100% cheese.

4 10. Plaintiff and members of the Class have been injured, suffering an ascertainable
5 monetary loss, and seek a refund and/or rescission of the transaction as well as all further equitable and
6 injunctive relief as provided by law.
7

8 III. PARTIES

9 11. Plaintiff is and was at all times alleged herein a citizen of the United States and a citizen
10 of the State of California, and he currently resides in Davis, California. Over the years, Plaintiff
11 consistently and routinely purchased Kraft grated "100% parmesan cheese" products for personal use.
12 Most recently in approximately October 2015, Plaintiff purchased the Kraft grated "100% parmesan
13 cheese" product at a retail store located in this District.
14

15 12. Defendant Kraft is a Pennsylvania corporation with headquarters in Pittsburg,
16 Pennsylvania and Chicago, Illinois. Defendant maintains an agent for service of process at CT
17 Corporation System, 818 West Seventh St, Ste. 930, Los Angeles, CA 90017. Upon information and
18 belief, Defendant has long maintained substantial production, distribution, marketing, and sales
19 operations in California and in this District in particular. For example, Defendant maintains a
20 production plant in Tulare, California where it produces the parmesan cheese used in the products at
21 issue.²
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24

25 ² Christopher Palmeri, *Stealing a Wedge From Wisconsin*, Bloomberg (Feb. 11, 2001),
26 <http://www.bloomberg.com/news/articles/2001-02-11/stealing-a-wedge-from-wisconsin-intl-edition>;
27 FDA, *List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile* (Mar.
28 2015), <http://www.fda.gov/Food/GuidanceRegulation/ImportsExports/Exporting/ucm120245>; Cal.
Dep't of Res. Recycling and Recovery (CalRecycle), *Kraft Foods Global Inc. – Tulare* (Dec. 13,
2011),
[http://www.calrecycle.ca.gov/wrap/search.asp?VW=APP&BIZID=1942&YEAR=2004&CNTY=.](http://www.calrecycle.ca.gov/wrap/search.asp?VW=APP&BIZID=1942&YEAR=2004&CNTY=)

1 **IV. FACTUAL BACKGROUND**

2 13. Cellulose is made from wood-pulp and, as a technical matter, is wood.³ It is used to
3 reduce the caking and clumping of cheese. However, it can also be used to artificially and cheaply
4 increase the bulk and weight of cheese products, cutting production costs and increasing profits at the
5 expense of quality and the nutritional value of the cheese. As such, parmesan cheese, like many other
6 types of cheeses, is regulated by the government.
7

8 14. When the Food and Drug Administration (“FDA”) originally gave notice regarding a
9 proposed change to its regulations to allow for the use of cellulose as an optional anticaking agent in
10 grated cheese, it stated that standard for the use of anticaking agents was that “[t]he total amount [of
11 anticaking agent] that can be used singly or in combination, cannot exceed 2 percent of the weight of
12 the finished food.”⁴
13

14 15. The FDA and the United States Department of Agriculture’s Food Safety and
15 Inspection Service (“FSIS”) currently share an ingredient approval process. The FDA determines the
16 safety of substances and prescribes safe conditions of use while the FSIS determines the efficacy and
17 suitability of food ingredients in meat, poultry, and egg products. FSIS issued a directive (“FSIS
18 Directive 7120.1”) that provides inspection program personnel with an up-to-date list of substances
19 that may be used in the production of meat, poultry, and egg products. The FSIS entry for cellulose,
20 reproduced below, provides that cheese may not include more than 2% cellulose:⁵
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24

25 ³ Linda Larsen, *Is There Wood in Your Parmesan Cheese?*, Food Poisoning Bulletin (Mar. 3, 2016),
<https://foodpoisoningbulletin.com/2016/is-there-wood-in-your-parmesan-cheese/>.

26 ⁴ See Grated Cheeses, Microcrystalline Cellulose as Optional Anticaking Agent, 37 Fed. Reg. 20,183
(Sept. 27, 1972) (to be codified at 21 C.F.R. pt. 19).

27 ⁵ *FSIS Directive 7120.1 Revision 33 - Safe and Suitable Ingredients used in the Production of Meat,*
28 *Poultry, and Egg Products* 65 (Mar. 3, 2016), <http://www.fsis.usda.gov/wps/wcm/connect/bab10e09-aefa-483b-8be8-809a1f051d4c/7120.1.pdf?MOD=AJPERES>.

SUBSTANCE	PRODUCT	AMOUNT	REFERENCE	LABELING REQUIREMENTS
Cellulose (powdered)	To facilitate grinding and shredding in cheese	Not to exceed 2 percent of the cheese	Acceptability determination	None under the accepted conditions of use (1)

16. In November 2012, the FDA conducted a surprise inspection of the Castle Cheese, Inc. (“Castle”) factory in rural Pennsylvania to find that the cheese producer, which supplies grocery chains throughout the country, had been illegally doctoring its parmesan cheese with cut-rate fillers, such as cellulose, in violation of FDA regulations.⁶

17. In July 2013, the FDA issued a warning letter to Castle noting its violations of FDA regulations with respect to the use of cellulose in cheese products.⁷ As a result of these violations, Castle President Michelle Myrter is scheduled to plead guilty to criminal charges and faces up to a year in prison as well as a \$100,000 fine.⁸

18. Following the FDA’s 2013 reports of Castle’s violations, independent investigations have made it clear that violations of cellulose regulations are not isolated to Castle and are, in fact, an industry-wide problem. According to a statement by Arthur Schuman, the largest seller of Italian hard-cheese in the United States: “The tipping point [is] grated cheese, where [in some cases] less than 40 percent of the product was actually a cheese product . . . Consumers are innocent, and they’re not getting what they bargained for. And that’s just wrong.”⁹

19. According to independent laboratory testing conducted by Bloomberg News, Kraft-brand “100% GRATED PARMESAN Cheese” products, which are sold in thousands of retail outlets nation-wide, contain 3.8% cellulose¹⁰; 1.8% over the 2% permitted by the FSIS Directive 7120.1.¹¹

⁶ See *supra* n.1.

⁷ FDA Warning Letter to Castle Cheese, Inc. dated July 11, 2013, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm363201.htm>.

⁸ See *supra* n.1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *supra* ¶ 15 & n.5.

1 20. Nevertheless, as indicated in Figure 1 below, Kraft unequivocally declares to
2 consumers on the front labels of its Kraft-brand grated parmesan cheese products that their products
3 contain “100% GRATED PARMESAN Cheese”:
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17 **Fig. 1:** Kraft-brand “100% GRATED PARMESAN Cheese”

18 Image available: <http://www.kraftrecipes.com/products/kraft-100-grated-parmesan-chees-1147.aspx>

19 21. This type of mislabeling is common because, with the exception of the Castle
20 prosecution, the “FDA has reported that limited resources and authorities challenge its efforts to carry
21 out its food safety responsibilities. . . [which] impact [its] efforts to oversee food labeling laws.”¹² As a
22 result, food producers have had little incentive to comply with FDA and other governmental agency
23 guidelines regarding cellulose. Through this lawsuit, however, Plaintiff seeks to hold Kraft to the
24 applicable legal standards and stop the practice of misleading consumers by mislabeling and
25

26
27 ¹² U.S. Gov’t Accountability Off., GAO-08-597, *FOOD LABELING - FDA Needs to Better Leverage*
28 *Resources, Improve Oversight, and Effectively Use Available Data to Help Consumers Select Healthy*
Foods (Sept. 2008), <http://www.gao.gov/new.items/d08597.pdf>.

1 artificiality increasing the bulk and weight of cheese products through the use of filler product such as
2 cellulose.

3 **V. SUBSTANTIVE ALLEGATIONS**

4 22. Kraft is engaged in the business of producing, designing, developing, manufacturing,
5 testing, packaging, promoting, marketing, distributing, labeling and selling Parmesan cheese products
6 in California and throughout the country.
7

8 23. Kraft produces, designs, develops, manufactures, tests, packages, markets, distributes,
9 labels, sells, and advertises the “100% GRATED PARMESAN Cheese” products at issue here
10 throughout the United States, including in the State of California and in this District.

11 24. Specifically, Kraft has made its “100% GRATED PARMESAN Cheese” products
12 available for purchase at thousands of convenience stores operating in California and this District such
13 as Walmart, Raley’s, Safeway, Lucky, Target, and Nob Hill Foods. Defendant also markets,
14 advertises, and sells its Kraft-brand “100% GRATED PARMESAN Cheese” products online to
15 consumers throughout the United States via its website: <http://www.kraftrecipes.com/>.
16

17 25. At all or nearly all of the above-noted retail food stores, and on its website, Defendant
18 Kraft advertises and sells Kraft-brand “100% GRATED PARMESAN Cheese” products.

19 26. These Kraft-brand “100% GRATED PARMESAN Cheese” products make one primary
20 marketing representation on the label: The product is “100% Grated Parmesan Cheese.”
21

22 27. In fact, Kraft prominently displays in large capitalized lettering on the front labels of its
23 grated parmesan cheese products that the product is “100% GRATED PARMESAN Cheese.”
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1 28. On Kraft’s website page for recipes to make with its grated parmesan cheese product,
2 Kraft continues to encourage customers to “[m]ake every night of the week rewarding and relaxing with
3 **KRAFT 100% Grated Parmesan Cheese. . .**”¹³
4



12 29. Similarly, at the top of its products pages, Kraft emphasizes the supposedly “100%
13 Grated Parmesan Cheese” nature of those products, a few examples of which are reproduced below:¹⁴
14

15 **Kraft 100% Grated Parmesan Cheese 8 oz. Shaker**
16 **Parmesan**



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26 ¹³ <http://www.kraftrecipes.com/kraftcheese/parm.aspx> (emphasis added) (last visited April 18, 2016).
27 ¹⁴ <http://www.kraftrecipes.com/products/kraft-100-grated-parmesan-chees-1147.aspx> (last visited April
28 18, 2016); <http://www.kraftrecipes.com/products/kraft-100-grated-parmesan-chees-1002.aspx> (last
visited April 18, 2016); and <http://www.kraftrecipes.com/products/kraft-100-grated-parmesan-chees-1001.aspx> (last visited April 18, 2016) respectively.

Kraft 100% Grated Parmesan Cheese 16 oz. Shaker Parmesan



Kraft 100% Grated Parmesan Cheese 24 oz. Shaker Parmesan



30. Further, Kraft emphasizes not once *but twice* on many of its front labels the “100%” representation as well as claiming there are “no fillers” in the product and, indeed, highlighting the “100%” and “NO FILLERS” in prominent red boxes:



31. Kraft’s “100% GRATED PARMESAN Cheese” products are not, however, comprised of “100% Parmesan Cheese” and, in fact, contain fillers and/or anti-caking agents such as cellulose.

1 32. Indeed, independent testing has indicated that at least 3.8 percent of the grated
2 parmesan cheese produced, advertised, and sold by Kraft is comprised of cellulose, an anti-clumping
3 agent derived from wood chips.¹⁵

4 33. Customers, including Plaintiff, reasonably rely on Kraft's labeling and representations
5 that its cheese products contain "100% Parmesan Cheese" and purchased those products as a result.
6

7 34. Specifically, Plaintiff purchased Kraft-brand "100% GRATED PARMESAN Cheese"
8 products on numerous occasions, most recently, October 1, 2015, within this District.

9 35. Plaintiff saw and relied on the front label of the product, which prominently stated,
10 "100% GRATED PARMESAN Cheese" in his decision to purchase the product. Plaintiff would not
11 have purchased this product, or would have paid significantly less for the product, had he known that
12 the "100%" representation mischaracterizes the amount and percentage of Parmesan cheese in the
13 container.
14

15 36. Relying on the false and misleading claims on its grated parmesan cheese product
16 labels, Plaintiff and members of the Class have purchased millions of dollars of Kraft's grated cheese
17 products during the relevant time period that they otherwise would not have purchased or would not
18 have paid the same price to purchase.

19 37. The Kraft Heinz Company is the third-largest food and beverage company in North
20 America and the fifth-largest food and beverage company in the world.¹⁶ Kraft boasted a net revenue
21 of \$18.2 billion dollars in 2014.¹⁷ In the United States, where Kraft is the largest producer and seller of
22 cheese, it commanded a 27% value share in 2015 of all cheese sold in the country.¹⁸
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26 ¹⁵ *See supra* n.1.

27 ¹⁶ *About Us*, <http://www.kraftfoodsgroup.com/about/index.aspx> (last visited Apr. 14, 2016).

28 ¹⁷ Kraft Foods Group, Inc., Annual Report (Form 10-K) (Dec. 27, 2014).

¹⁸ Euromonitor Intern'l, *Cheese in the United States* (July 2015), <http://www.euromonitor.com/cheese-in-the-us/report>.

1 **2. Commonality: Fed. R. Civ. P. 23(a)(2).**

2 44. The rights of each member of the proposed Class were violated in a similar fashion
3 based upon Defendant's uniform wrongful actions and/or inaction.

4 45. The following questions of law and fact are common to each proposed Class Member
5 and predominate over questions that may affect individual Class Members:
6

- 7 a. Whether Defendant Kraft misrepresented the ingredients of its "100% GRATED
8 PARMESAN Cheese" products;
- 9 b. Whether Defendant Kraft engaged in marketing and promotional activities which were
10 likely to deceive consumers by omitting, suppressing, and/or concealing the true
11 content of its "100% GRATED PARMESAN Cheese" products;
- 12 c. Whether Defendant Kraft omitted, suppressed, and/or concealed material facts
13 concerning their "100% GRATED PARMESAN Cheese" products from consumers;
- 14 d. What the fair market value of Defendant Kraft's "100% GRATED PARMESAN
15 Cheese" products would have been throughout the class period but for Defendant
16 omissions, suppressions, and/or concealments concerning the true content of
17 Defendant's "100% GRATED PARMESAN Cheese" products;
- 18 e. Whether the prices which Defendant Kraft charged for its "100% GRATED
19 PARMESAN Cheese" products exceeded their fair market value;
- 20 f. Whether Plaintiff and the Class were deprived of the benefit of the bargain in
21 purchasing Defendant Kraft's "100% GRATED PARMESAN Cheese" products;
- 22 g. Whether the prices that Defendant Kraft charged for its "100% GRATED PARMESAN
23 Cheese" products constituted unfair acts or practices in violation of California's Unfair
24 Competition Law and/or California's Consumers Legal Remedies Act;
- 25 h. Whether Defendant Kraft's actions occurred in connection with the Defendant's
26 conduct of trade and commerce;
- 27 i. Whether Defendant Kraft's omissions, suppressions, and/or concealments of the
28 content of its "100% GRATED PARMESAN Cheese" products enabled Defendant to
charge unfair or unconscionable prices;
- j. Whether Defendant Kraft violated California's False Advertising Law, California's
Consumer Legal Remedies Act, California's Unfair Competition Law, and/or the
Magnuson-Moss Warranty Act;

- 1 k. Whether Defendant Kraft made and/or breached an express or implied warranty to
2 Plaintiff and the Class;
- 3 l. Whether Defendant Kraft was unjustly enriched at the expense of Plaintiff and Class
4 members;
- 5 m. Whether Defendant Kraft's conduct in violation of California and federal law was
6 intentional and knowing;
- 7 n. Whether Defendant Kraft is likely to continue to use false, misleading or unlawful
8 conduct such that an injunction is necessary;
- 9 o. Whether Plaintiff and the Class have been damaged and, if so, the extent of such
10 damages; and
- 11 p. Whether Plaintiff and the Class are entitled to an award of reasonable attorneys' fees,
12 interest, and costs of suit.

13 **3. Typicality: Fed. R. Civ. P. 23(a)(3).**

14 46. The claims of the individually named Plaintiff are typical of the claims of the Class and
15 do not conflict with the interests of any other members of the Class, in that Plaintiff and the other
16 members of the Class were subjected to the same uniform practices of the Defendant.

17 **4. Adequacy: Fed. R. Civ. P. 23(a)(4).**

18 47. The individually named Plaintiff will fairly and adequately represent the interest of the
19 Class. Plaintiff is committed to the vigorous prosecution of the Class' claims and has retained
20 attorneys who are qualified to pursue this litigation and have experience in class actions – in particular,
21 consumer protection and false advertising claims.

22 48. Defendant has acted or refused to act on grounds generally applicable to the proposed
23 Class, thereby making appropriate equitable relief with respect to the Class.

24 **5. The pre-requisites to maintaining a class action for injunctive relief apparent:
25 Fed. R. Civ. P. 23(b)(2).**

- 26 49. The prerequisites to maintaining a class action for injunctive relief exist:
- 27 a. If injunctive relief is not granted, great harm and irreparable injury to Plaintiff and the
28 members of the Class will continue; and

1 b. Plaintiff and the members of the Class have no adequate remedy at law for the injuries
2 which are threatened to recur, in that, absent action from this Court, Defendant will
3 continue to violate state law, and cause damage to Plaintiff.

4 50. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seek,
5 *inter alia*, equitable remedies with respect to the Class as a whole.

6 **6. Common questions predominate, and the class action device is superior, making
7 certification appropriate: Fed. R. Civ. P. 23(b)(3).**

8 51. The common questions of law and fact enumerated above predominate over questions
9 affecting only individual members of the Class, and a class action is the superior method for fair and
10 efficient adjudication of the controversy. The likelihood that individual members of the Class will
11 have the necessary resources to prosecute separate actions is remote due to the time and expense
12 necessary to conduct such complex litigation in relation to each person's individual potential recovery.
13 The prosecution of this action as a class action will conserve the resources of the judicial system and
14 ensure consistent judgments for Defendant as well as consumers. Plaintiff's counsel, highly
15 experienced in class actions, foresee little difficulty in the management of this case as a class action.

16 **VII. CLAIMS FOR RELIEF**

17 **COUNT I**
18 **BREACH OF EXPRESS WARRANTY**
19 **(ON BEHALF OF THE NATIONAL CLASS)**

20 52. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

21 53. In connection with the sale of their "100% GRATED PARMESAN Cheese" products
22 ("the Product"), Defendant issued an express warranty that these products consisted of 100%
23 Parmesan cheese and/or contain "no fillers."

24 54. Defendant's affirmation of fact and promise on the labels of these products that they
25 consisted of 100% Parmesan cheese and/or contain "no fillers" became part of the basis of the bargain
26 between Defendant and Plaintiff and all Class members, thereby creating express warranties that these
27 products would conform to Defendant's affirmation of fact, representations, promise, and description.
28

1 55. Defendant breached its express warranties because their “100% GRATED
2 PARMESAN Cheese” products do not in fact consist of 100% Parmesan cheese and/or do not contain
3 “no fillers” – but instead, are substantially filled with cellulose. The products at issue here do not live
4 up to Defendant’s express warranties.

5
6 56. Plaintiff and the members of the class were injured as a direct and proximate result of
7 Defendant’s breach because: (a) they would not have purchased or they would have paid less for the
8 Product if they had known the true facts; (b) they paid a premium price for the Product as a result of
9 Defendant’s false warranties and misrepresentations; and (c) they purchased a Product that did not
10 have the characteristics, qualities, or value promised by Defendant.

11
12 **COUNT II**
BREACH OF IMPLIED WARRANTY
13 **(ON BEHALF OF THE NATIONAL CLASS)**

14 57. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

15 58. The Uniform Commercial Code § 2-314 provides that, unless excluded or modified, a
16 warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a
17 merchant with respect to goods of that kind. To be “merchantable,” goods must “run, within the
18 variations permitted by the agreement, of even kind, quality and quantity within each unit and among
19 all units involved,” “are adequately contained, packaged, and labeled as the agreement may require,”
20 and “conform to the promise or affirmations of fact made on the container or label if any.”

21
22 59. Defendant Kraft, through its actions and omissions as alleged herein, in the sale,
23 labeling, marketing, and promotion of its “100% GRATED PARMESAN Cheese” products, impliedly
24 warranted that these products consisted of 100% Parmesan cheese and/or contained “no fillers.”

25 60. Defendant is a merchant with respect to the goods which were sold to Plaintiff and the
26 Class, and there was an implied warranty that those goods were merchantable.
27
28

1 68. The negligent misrepresentations and omissions made by Defendant, upon which
2 Plaintiff and Class members reasonably and justifiably relied, were intended to induce, and actually
3 induced, Plaintiff and all Class members to purchase the products at issue.

4 69. The negligent misrepresentations and omissions made by Defendant, upon which
5 Plaintiff and all Class members reasonably and justifiably relied, were intended to induce, and actually
6 induced, Plaintiff and Class members to purchase the “100% GRATED PARMESAN Cheese”
7 products at issue.

8 70. Plaintiff would not have purchased Defendant’s “100% GRATED PARMESAN
9 Cheese” products, or would not have purchased the products on the same terms, if the true ingredients
10 had been known to them. Class members were likely to also have reasonably relied upon Defendant’s
11 deceptive labeling and advertising in Defendant’s “100% GRATED PARMESAN Cheese” products.
12

13 71. The negligent actions of Defendant caused damage to Plaintiff and all Class members,
14 who are entitled to damages and other legal and equitable relief as a result.
15

16 **COUNT IV**
17 **UNJUST ENRICHMENT AND COMMON LAW RESTITUTION**
18 **(ON BEHALF OF THE NATIONAL CLASS)**

19 72. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

20 73. As a result of Defendant’s wrongful and deceptive conduct, Plaintiff and Class
21 members have suffered a detriment while Defendant has received a benefit.

22 74. Defendant’s misleading, inaccurate and deceptive marketing and labeling intentionally
23 cultivates the perception that consumers are being offered a product that they are not. Plaintiff and all
24 Class members likely would not have purchased Defendant’s “100% GRATED PARMESAN Cheese”
25 products, or would have paid significantly less for the products, if Defendant had not misrepresented
26 the nature of the products.
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28

1 75. Defendant received a premium price benefit and/or additional sales from Plaintiff and
2 Class members as a result of this unlawful conduct.

3 76. Defendant should not be allowed to retain the premium price profits and/or additional
4 sales generated from the sale of products that were unlawfully marketed, advertised and promoted.
5 Allowing Defendant to retain these unjust profits would offend traditional notions of justice and fair
6 play and induce companies to misrepresent key characteristics of their products in order to increase
7 sales.

8
9 77. Thus, Defendant is in possession of funds that were wrongfully retained from Plaintiff
10 and Class members that should be disgorged as illegally gotten gains.

11
12 **COUNT V**
13 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**
14 **(CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)**
15 **(ON BEHALF OF THE CALIFORNIA CLASS)**

16 78. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

17 79. California's False Advertising Law ("FAL"), California Business and Professions Code
18 ("Cal. Bus. & Prof. Code") §§ 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading
19 advertising.

20 80. Specifically, Cal. Bus. & Prof. Code § 17500 makes it unlawful for "[a]ny person . . . to
21 make or disseminate or cause to be made or disseminated from this state before the public in any state
22 . . . in any advertising device . . . or in any other manner or means whatever, including over the
23 Internet, any statement, concerning . . . personal property or services, professional or otherwise, or
24 performance or disposition thereof, which is untrue or misleading and which is known, or which by
25 the exercise of reasonable care should be known, to be untrue or misleading."

26 81. Kraft engaged in a scheme of offering mislabeled containers of "100% GRATED
27 PARMESAN Cheese" products for sale to Plaintiff and California Class members by way of product
28 packaging, labeling, internet advertising, and other promotional materials.

1 82. These labels and materials misrepresented and/or omitted the true content and nature of
2 the mislabeled products.

3 83. Kraft's advertisements and inducements – including the “100%” cheese representations
4 and/or “no filler” representation made on Kraft's labels and website – were made in California, and
5 come within the definition of advertising as contained in Cal. Bus. & Prof. Code §§ 17500, *et seq.*, in
6 that the product packaging, labeling, and promotional materials were intended as inducements to
7 purchase Kraft's “100% GRATED PARMESAN Cheese” products, and they are statements
8 disseminated by Kraft to Plaintiff and the California Class members.
9

10 84. Kraft knew or should have known that these statements were inaccurate and
11 misleading.

12 85. Kraft's false advertisements, as alleged herein, were calculated to induce Plaintiff and
13 California Class members to purchase merchandise they otherwise would not have and/or to spend
14 more money than they otherwise would have spent, in order to increase profits.
15

16 86. Defendant's actions caused injury to Plaintiff and the California Class members
17 because: (a) they would not have purchased the product if they had known that the product did not
18 have the characteristics or qualities as impliedly warranted by Defendant or they would have paid
19 substantially less for the product; (b) they paid a premium price for the Product as a result of
20 Defendant's false warranties and misrepresentations; and (c) they purchased a Product that did not
21 have the characteristics, qualities, or value promised by Defendant.
22

23 87. Through their unfair acts and practices, Kraft improperly obtained money from Plaintiff
24 and the California Class. As such, Plaintiff requests that this Court cause Kraft to restore this money to
25 Plaintiff and all class-members, and to enjoin Kraft from continuing to violate the FAL in the future.
26

27 88. Plaintiff also requests that the Court award reasonable attorneys' fees and costs
28 pursuant to Cal. Code Civ. Proc. § 1021.5.

COUNT VI
VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT
(CAL. CIV. CODE §§ 1750, *ET SEQ.*)
(ON BEHALF OF THE CALIFORNIA CLASS)

89. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

90. This cause of action is brought pursuant to the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*

91. Plaintiff and all California Class members are “consumers” within the meaning of Cal. Civ. Code § 1761(d).

92. The sale of Kraft’s “100% GRATED PARMESAN Cheese” products to Plaintiff and California Class members were “transactions” within the meaning of Cal. Civ. Code § 1761(e).

93. The cheese products purchased by Plaintiff and California Class members are “goods” within the meaning of Cal. Civ. Code § 1761(a).

94. As alleged herein, Defendant violated the CLRA by falsely labeling and advertising its products as consisting of 100% Parmesan Cheese and/or containing no fillers when, in fact, they contain a significant percentage of cellulose, rendering the “100%” and “no filler” claims false, and misleading to a reasonable consumer.

95. Defendant violated several provisions of the CLRA. Cal. Civ. Code § 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” Further, Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” In addition, Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell them as advertised.”

1 96. By engaging in the conduct alleged herein, Kraft violated, and continues to violate,
2 among other laws, sections 1770(a)(5), (7), and (9) of the CLRA.

3 97. Plaintiff relied on Kraft's false representations that its "100% GRATED PARMESAN
4 Cheese" products consisted of 100% Parmesan cheese. Plaintiff would not have purchased the product,
5 or would have paid significantly less for the product, but for Defendant's unlawful conduct. California
6 Class members were likely to also have relied upon Defendant's deceptive labeling and advertising.
7 Plaintiff and the California Class acted reasonably when they purchased Defendant's "100%
8 GRATED PARMESAN Cheese" products under the mistaken belief that the products they purchased
9 were 100% Parmesan cheese.
10

11 98. As a result of Defendant's false representations regarding its "100% GRATED
12 PARMESAN Cheese" products, Plaintiff and the members of the California Class were injured
13 because they: (a) would not have purchased the product if they had known that the product did not
14 have the characteristics or qualities as impliedly warranted by Defendant or they would have paid
15 substantially less for the product; (b) paid a premium price for the Product as a result of Defendant's
16 false warranties and misrepresentations; and (c) purchased a Product that did not have the
17 characteristics, qualities, or value promised by Defendant.
18

19 99. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California Class seek
20 injunctive and equitable relief for Defendant's violations of the CLRA. Contemporaneously with the
21 filing of this Complaint, Plaintiff will send a notice letter by certified mail to Kraft indicating his intent
22 to pursue claims under the CLRA that provides Kraft with an opportunity to cure the unlawful
23 practice, consistent with Cal. Civ. Code § 1782. If Defendant fails to take corrective action within 30
24 days of receipt of the demand letter, Plaintiff will amend the Complaint to include a request for
25 damages as permitted under Cal. Civ. Code § 1782(d).
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COUNT VII
VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § § 17200, *ET SEQ.*)
(ON BEHALF OF THE CALIFORNIA CLASS)

100. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

101. Plaintiff and California Class members are “persons” within the meaning of Cal. Bus. & Prof. Code § 17201.

102. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.

103. A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the consuming public. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

104. Defendant has violated the “unfair” prong of the UCL by mislabeling their “100% GRATED PARMESAN Cheese” products in order to induce consumers into believing the products consist of 100% Parmesan cheese and/or contain no fillers, when they do not.

105. The business acts and practices alleged herein are unfair because they caused Plaintiff and California Class members to falsely believe that Defendant is offering a product that is superior to what they actually received. This deception was likely to have induced reasonable consumers, including Plaintiff, to buy Defendant’s “100% GRATED PARMESAN Cheese” products, which they otherwise would not have purchased, or would have paid substantially less for such products.

106. The gravity of the harm to Plaintiff and the California Class members resulting from these unfair acts and practices outweighs any conceivable reasons, justifications and/or motives of Defendant for engaging in such deceptive acts and practices. By committing the acts and practices

1 alleged herein, Defendant engaged in, and continue to engage in, unfair business practices within the
2 meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 107. Defendant has also violated the “unlawful” prong of the UCL by violating several
4 California laws, as alleged herein, including the FAL and CLRA.

5 108. Defendant has also violated the “fraudulent” prong of the UCL by misleading Plaintiff
6 and the California Class to believe that Defendant’s “100% GRATED PARMESAN Cheese” products
7 consist of 100% Parmesan cheese and/or contain “no fillers”, when in actuality, they include a
8 substantial percentage of cellulose at levels beyond what is allowed by government directives.
9

10 109. As a result of their unlawful acts and practices, Defendant improperly obtained money
11 from Plaintiff and the California Class because: (a) they would not have purchased the product if they
12 had known that the product did not have the characteristics or qualities as impliedly warranted by
13 Defendant or they would have paid substantially less for the product; (b) paid a premium price for the
14 Product as a result of Defendant’s false warranties and misrepresentations; and (c) purchased a
15 Product that did not have the characteristics, qualities, or value promised by Defendant.. As such,
16 Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and the California
17 Class, and to enjoin Defendant from continuing to violate the UCL as alleged herein.
18

19
20 **COUNT VIII**
21 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**
22 **(15 U.S.C. § § 2301, *ET SEQ.*)**
23 **(ON BEHALF OF THE NATIONAL CLASS)**

24 110. Plaintiff incorporates all preceding and subsequent paragraphs as if fully set forth herein.

25 111. Defendant’s “100% GRATED PARMESAN Cheese” products are “consumer
26 products” within the meaning of 15 U.S.C. § 2301(1).

27 112. Plaintiff and Class Members are “consumers” within the meaning of 15 U.S.C. §
28 2301(3).

1 113. Defendant Kraft is a supplier and warrantor within the meaning of 15 U.S.C. § 2301(4),
2 (5).

3 114. In connection with the sale of its “100% GRATED PARMESAN Cheese” products,
4 Defendant gave multiple written warranties as defined in 15 U.S.C. § 2301(6), including but not
5 limited to written warranties that the products contained “100% Parmesan Cheese” and/or that the
6 products contained “no fillers.”
7

8 115. Defendant breached these written warranties because its “100% GRATED
9 PARMESAN Cheese” products do not, in fact, consist of 100% Parmesan cheese and/or do not
10 contain “no fillers” – but instead, are substantially filled with cellulose. The products at issue here do
11 not live up to Defendant’s express warranties.
12

13 116. In connection with the sale of its “100% GRATED PARMESAN Cheese” products,
14 Defendant also gave multiple implied warranties as defined in 15 U.S.C. § 2301(7), including but not
15 limited to the implied warranty of merchantability and the implied warranty of fitness for a particular
16 purpose.
17

18 117. Defendant breached these implied warranties, in that its “100% GRATED
19 PARMESAN Cheese” products are not fit for the ordinary purpose for which it is used, namely as a
20 “100% GRATED PARMESAN Cheese” product.
21

22 118. Plaintiff and the members of the class were injured as a direct and proximate result of
23 Defendant’s breach of their warranties because Plaintiff and Class members: (a) would not have
24 purchased the product if they had known that the product did not have the characteristics or qualities
25 as impliedly warranted by Defendant, or they would have paid substantially less for the product; (b)
26 paid a premium price for the Product as a result of Defendant’s false warranties and
27 misrepresentations; and (c) purchased a Product that did not have the characteristics, qualities, or value
28 promised by Defendant.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff demand judgment as follows:

A. An order declaring that this action may be maintained as a class action pursuant to Fed. R. Civ. Proc. 23, and for an order certifying this case as a class action and appointing Plaintiff as representatives of the Classes;

B. A declaration that Defendant’s actions, as described herein, violate the claims described herein;

C. An award of injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Classes, including, *inter alia*, an order prohibiting Defendant from engaging in the unlawful act described above;

D. An award to Plaintiff and the Classes of restitution and/or other equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment that Kraft obtained from Plaintiff and the Classes as a result of its unlawful, unfair and fraudulent business practices described herein;

E. For judgment for Plaintiff and the Classes on their claims in an amount to be proven at trial, for compensatory damages caused by Defendant’s practices; along with exemplary damages to each Class member for each violation;

F. For pre-judgment and post-judgment interest as provided for by law or allowed in equity;

G. For an order awarding Plaintiff and the Class their attorneys’ fees and costs; and

H. Such other and further relief as may appear necessary and appropriate.

IX. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. Proc. 38(b), Plaintiff demands a trial by jury on all issues so triable.

DATED this 25th day of April, 2016.

KELLER ROHRBACK L.L.P.

By /s/ Matthew J. Preusch

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