

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CARMEN PELLITTERI, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

PUBLIX SUPER MARKETS, INC.,

Defendant.

Case No. 1:16-cv-9420

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Carmen Pellitteri (“Pellitteri” or “Plaintiff”), individually and on behalf of all those similarly situated, brings this lawsuit against Defendant Publix Super Markets, Inc. (“Publix” or “Defendant”). These allegations are based upon personal knowledge as to facts pertaining to Plaintiff and upon information and belief as to all other matters, based on the investigation of his counsel.

NATURE OF THE ACTION

1. This is a consumer protection class action brought pursuant to Fed. R. Civ. P. 23 arising out of Publix’s misbranding and false advertising of its “100% Real Grated Romano Parmesan Cheese” and “100% Real Grated Parmesan Cheese” (collectively the “Products” or “100% Parmesan Cheese Products”). Defendant’s label and advertisements claim the Products contain “100% Real” Parmesan or Parmesan and Romano cheeses. Defendant’s claims, however, are false, misleading, and reasonably likely to deceive the public because the Products are not “100% Real” Parmesan or Parmesan and Romano cheeses. Instead, Publix’s 100% Parmesan Cheese Products contain substantial and unnecessary amounts of the filler cellulose.

2. Defendant manufactures, markets, sells, and distributes the Products. Through an extensive, integrated, and widespread marketing campaign, Defendant promises that the Products contain “100% Real” Parmesan or Parmesan and Romano cheeses.

3. The same promise is made on each Product label and throughout the marketing materials. For example, the packaging prominently states that the Products are made with “100% Real” Parmesan or Parmesan and Romano cheeses.

4. Defendant’s longstanding advertising and marketing campaign is designed to induce consumers to purchase the Products because of their reliance upon the accuracy of the deceptive message.

5. Defendant, however, has not sold the Products as advertised. As a result of the misleading messages conveyed on its Product labels and by its marketing campaign, Defendant has caused consumers to purchase Products that are not what they purport to be.

6. Plaintiff and members of the Class defined herein, purchased Publix's 100% Parmesan Cheese Products because they were deceived into believing they contained "100% Real" Parmesan or Parmesan and Romano cheeses. Plaintiff Pellitteri and members of the Class have been injured and have suffered financial harm as a direct result of Publix's deceit.

7. As such, Plaintiff brings this class action on behalf of himself and all persons who purchased Publix's "100% Real Grated Romano Parmesan Cheese" and "100% Real Grated Parmesan Cheese" for personal use.

PARTIES

8. Plaintiff Pellitteri is a citizen of Florida. Plaintiff has been a resident of Florida during the entire Class Period. Plaintiff Pellitteri purchased Publix's "100% Real Grated Romano Parmesan Cheese" in December of 2015 from a Publix store in Florida after reading the label representing that it was "100% Real Grated Romano Parmesan Cheese." Plaintiff observed the product's labeling and reasonably relied upon its representation that the product contained "100% Real" Parmesan and Romano cheeses. In reliance on the representations on the front of the label, Plaintiff Pellitteri purchased the product for the listed price.

9. Contrary to Defendant's representations the Product does not contain "100% Real Grated Romano Parmesan Cheese." Instead, it contains a significant amount of the filler cellulose. Had Plaintiff known the truth about Defendant's misrepresentations and omissions at the time of his purchase, Plaintiff would not have made the purchase.

10. Defendant Publix is a Florida corporation with its principal place of business located at 3300 Publix Corporate Parkway, Lakeland, Florida 33811. Publix was founded in Florida in 1930, and is one of the 10 largest volume supermarket chains in the United States. In 2015, its retail sales were \$32.4 billion. Publix has a total of 1,128 stores with locations in Florida, Alabama, Georgia, North Carolina, South Carolina, and Tennessee. Publix manufactures, sells, distributes, and advertises its house brand 100% Parmesan Cheese Products.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. §1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is class action in which there are in excess of 100 Class members and some members of the proposed Class are citizens of states different than Defendant.

12. This Court may exercise personal jurisdiction over Defendant.

13. Pursuant to 28 U.S.C. §1391, venue may be proper in the Northern District of Illinois.

FACTUAL BACKGROUND

14. Publix claims its mission is to be “the premier quality food retailer in the world” and it is “[p]assionately focused on customer value.”¹ Publix’s act of falsely and deceptively mislabeling its 100% Parmesan Cheese Products directly contradicts these ideals.

15. For years, Publix has distributed, marketed, and sold the Products advertised as containing “100% Real” Parmesan or Parmesan and Romano cheeses.

¹ <http://corporate.publix.com/about-publix/company-overview/mission-statement-guarantee>.

16. Since the Products' launch, Defendant, through its advertisements including on the Products' packaging and labeling, has consistently conveyed the message to consumers throughout the United States that the Products are made with "100% Real" cheese and no fillers.

17. On the front of Defendant's Romano Parmesan cheese containers is a prominent marketing advertisement proclaiming that its grated Romano Parmesan cheese product contains "100% Real Grated Romano Parmesan Cheese."



18. The front of Defendant's Parmesan cheese containers also displays a prominent marketing advertisement proclaiming that its grated Parmesan cheese product contains "100% Real Grated Parmesan cheese."



19. Publix's "100% Real Grated Romano Parmesan Cheese" and "100% Real Grated Parmesan Cheese" claims are literally false and misleading to consumers as its 100% Parmesan Cheese Products actually contain fillers, substitutes, and/or other additives.

20. On information and belief, Publix's 100% Parmesan Cheese Products do not contain "100% Real" Parmesan or Parmesan and Romano cheeses. Instead, a significant portion of Defendant's 100% Parmesan Cheese Products is cellulose, an anti-clumping agent derived from wood chips.

21. On information and belief, industry standards indicate that only two percent cellulose is necessary in Parmesan cheese products to accomplish anti-clumping effects. Publix's 100% Parmesan Cheese Products contain significantly more cellulose than industry standards.

22. Because cellulose is cheaper than parmesan cheese adding cellulose to Publix's 100% Parmesan Cheese Products helps drive down Publix's costs and increases its profits at the expense of consumers, who are ultimately cheated out of the "100% Real" cheese they thought they were purchasing.

23. Defendant has made, and continues to make, false and misleading claims regarding the composition, contents, and quality of its 100% Parmesan Cheese Products. Defendant therefore has misled and continues to mislead consumers and has been able to charge more for its 100% Parmesan Cheese Products than it would have been able to if it had properly and truthfully labeled the Products.

24. In making their purchasing decisions, consumers, including Plaintiff, reasonably rely on Defendant's claims that its 100% Parmesan Cheese Products consist of 100% cheese. Consumers, including Plaintiff, believe Publix's statement that its Products consist of "100% Real" Parmesan or Parmesan and Romano cheese means that no other cheeses, substitutes, or fillers are present in the container.

CLASS ACTION ALLEGATIONS

25. Plaintiff Pellitteri brings this action pursuant to Fed. R. Civ. Proc. 23(b)(2) and (b)(3), on behalf of himself and the members of the following Nationwide Class:

All persons who purchased in the United States Publix's "100% Real Grated Romano Parmesan Cheese" or "100% Real Grated Parmesan Cheese" for personal use.

26. Excluded from the Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors; those who purchased the Products for the purpose of resale; all persons who make a timely election to be excluded from the Class; the judge to whom this case is assigned and any immediate family members thereof; and those who assert claims for personal injury.

27. This action can be maintained as a class action because there is a well-defined community of interest in the litigation, and the proposed Class is easily ascertainable.

28. **Numerosity:** Pursuant to Rule 23(a)(1), Class members are so numerous that their individual joinder is impracticable. While the exact number of Class members is not known at this

time, on information and belief, the number of Class members exceeds 1,000.

29. **Typicality:** Pursuant to Rule 23(a)(3), Plaintiff's claims are typical of the Class members' claims because, among other things, all Class members were comparably injured through the uniform prohibited conduct described above.

30. **Common Questions Predominate:** Pursuant to Rule 23(a)(2) and (b)(3), questions of fact and law are common to the Class and predominate over any questions affecting individual Class members, including, without limitation:

- (a) Whether Defendant's advertisements and representations that the Products contain "100% Real" Parmesan or Parmesan and Romano cheeses are true, or are likely to mislead consumers;
- (b) Whether Defendant's 100% Parmesan Cheese Products contain "100% Real" Parmesan and/or Romano cheeses;
- (c) Whether Defendant engaged in false or misleading advertising;
- (d) Whether Defendant's conduct violates public policy;
- (e) Whether Defendant's conduct constitutes violations of the laws asserted herein;
- (f) Whether Plaintiff and the other Class members have been injured and the proper measure of their losses as a result of those injuries;
- (g) Whether Plaintiff and the other Class members are entitled to injunctive, declaratory, or other equitable relief; and
- (h) Whether Defendant was unjustly enriched.

31. **Adequacy:** Pursuant to Rule 23(a)(4), Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is familiar with the basic facts that form the bases of the Class

members' claims. Plaintiff's interests do not conflict with the interests of the other Class members he seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intends to prosecute this action vigorously.

32. **Superiority**: Pursuant to Rule 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

33. **Declaratory and Injunctive Relief**: Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

COUNT I

Violations of the Florida Deceptive and Unfair Trade Practices Act Fla. Stat. §§501.201, *et seq.*

On Behalf of Plaintiff and the Class

34. Plaintiff realleges and incorporates by reference the preceding allegations as if fully set forth herein.

35. Plaintiff brings this claim individually and on behalf of the Class.

36. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Sections 501.201 to 501.213, Florida Statutes.

37. The express purpose of FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

38. Section 501.204(1), Florida Statutes, declares as unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

39. The sale of the Products was a “consumer transaction” within the scope of FDUTPA.

40. Plaintiff is a “consumer” as defined by Section 501.203, Florida Statutes.

41. Defendant’s Products are a good within the meaning of FDUTPA, and Defendant is engaged in trade or commerce within the meaning of FDUTPA.

42. Defendant’s unfair and deceptive practices are likely to mislead—and have misled—reasonable consumers, such as Plaintiff and members of the Class.

43. Defendant has violated FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous, and substantially injurious to consumers.

44. Specifically, Defendant represents that the Products contain “100% Real” Parmesan or Parmesan and Romano cheeses, when in fact they are made with fillers, substitutes, and/or other additives, including a significant amount of cellulose, an anti-clumping agent derived from wood chips.

45. Plaintiff and Class members have been aggrieved by Defendant's unfair and deceptive practices in violation of FDUTPA, in that they paid money for Defendant's mislabeled Products.

46. Reasonable consumers rely on Defendant to honestly represent the true nature of its ingredients.

47. Defendant has deceived reasonable consumers, like Plaintiff and members of the Class, into believing the Products are something they are not; specifically that the Products are made with "100% Real" cheese and no fillers, substitutes, and/or other additives.

48. Pursuant to sections 501.211(2) and 501.2105, Florida Statutes, Plaintiff and members of the Class make claims for damages, attorney's fees, and costs. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading, and unfair practices of Defendant. Pursuant to section 501.211(1), Florida Statutes, Plaintiff and the Class seek injunctive relief for, *inter alia*, the Court to enjoin Defendant's above-described wrongful acts and practices and for restitution and disgorgement.

49. Plaintiff seeks all available remedies, damages, and awards as a result of Defendant's violations of FDUTPA.

COUNT II

Breach of Express Warranty On Behalf of Plaintiff and the Class

50. Plaintiff realleges and incorporates by reference the preceding allegations as if fully set forth herein.

51. Plaintiff brings this claim individually and on behalf of the Class.

52. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Products. The terms of that

contract include the promises and affirmations of fact made by Defendant on its Products' packaging and labeling, and through its marketing campaign, as described above. This product packaging and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant on the other.

53. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

54. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product that was "100% Real" Parmesan or Parmesan and Romano cheeses, as promised in the advertisements and on the labels.

55. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the purchase price of the Product they purchased.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against the Defendant, including the following:

A. Declaring that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule 23, and for an order certifying this case as a class action and appointing Plaintiff as Class representative, and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendant to pay actual damages to Plaintiff and the other members of the Class;

C. Ordering Defendant to pay punitive damages, as allowable by law, to Plaintiff and the other members of the Class;

D. Ordering Defendant to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiff and the other members of the Class;

E. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

F. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;

G. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

H. Ordering such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Respectfully submitted,

Dated: September 30, 2016

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