

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CHRISSEY SELLERS
individually and on behalf of all
others similarly situated,

Case No.:

Plaintiffs,

v.

KRAFT HEINZ FOODS COMPANY,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, Chrissy Sellers (“hereinafter Plaintiff”), individually, and on behalf of all other similarly situated persons, by and through their undersigned counsel, bring this class action complaint against Kraft Heinz Foods Company.

SUMMARY OF THE CASE

1. Kraft Heinz Foods Company, (“Kraft” or “Defendant”) is a company that produces, markets, and labels several food products including its “100%” Parmesan Cheese products. Kraft claims to sell “100%” Parmesan cheese.

2. Kraft manufactures, markets and labels lines of Parmesan Cheese products sold with labels that, in describing the contents, display the words “100%” Parmesan Cheese. In truth, Defendant’s Parmesan Cheese is not “100%” Parmesan Cheese as they contain artificial, synthetic, and/or chemical ingredients, including but not limited to cellulose, a filler and anti-clumping agent derived from wood pulp.

3. Plaintiff and the members of the Class, as defined herein, purchased Kraft's "100%" Parmesan cheese products because they were deceived into believing that the products were "100%" Parmesan cheese. Because Kraft's "100%" Parmesan cheese products contain a substantial amount of fillers and are not "100%" Parmesan cheese, Plaintiff and members of the Class have been injured and have suffered an ascertainable out-of-pocket loss. Plaintiff and members of the Class seek a refund and/or rescission of the transaction, and all further equitable and injunctive relief as provided by applicable law.

4. Plaintiff seeks relief in this action individually and on behalf of all purchasers of Kraft's "100%" Grated Parmesan Cheese products for breach of express and implied warranties, negligent misrepresentation, fraud, and for violation of the Florida Deceptive and Unfair Trade Practices Act.

PARTIES

5. Plaintiff, is a citizen of Florida. Plaintiff purchased the container of Kraft's "100%" Grated Parmesan Cheese relying on the only statement appearing on the front of the label – namely, that the product is "100%" Parmesan cheese. Sellers would not have purchased Kraft's "100%" Grated Parmesan Cheese, or would have paid significantly less for the product, had she known that the "100%" Parmesan cheese representation is false and mischaracterizes the amount and percentage of Parmesan cheese in the container. Plaintiff suffered injury in fact and lost money as a result of Kraft's deceptive, misleading, false, unfair, and fraudulent practices, as described herein.

6. Defendant Kraft Heinz Foods Company is a Pennsylvania corporation with headquarters in Pittsburgh, Pennsylvania and Chicago, Illinois. Defendant Kraft Heinz Foods Company develops, manufactures, distributes, sells, and advertises the product at issue here –

“100% Grated Parmesan Cheese” (“Product”) – nationwide, including in Florida. Defendant has long maintained substantial distribution, marketing, and sales operations in Florida, and in this District.

7. Not only did Plaintiff purchase the Kraft Parmesan Cheese because the labels said they were “100% Grated Parmesan Cheese,” but Plaintiff also paid more money for the products than they would have paid for other similar products that contained synthetic, artificial, or chemically processed ingredients, such as cellulose.

8. Had Plaintiff known the truth that the– “100% Grated Parmesan Cheese” were not “100%” Parmesan Cheese – they would not have purchased these products, nor would they have paid the premium price for these products.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action in which: (1) the matter in controversy exceeds the sum or value of \$5,000,000.00 exclusive of interest and costs; (2) a member of the class of Plaintiffs is a citizen of a State different from a defendant; and (3) the number of members of all proposed Plaintiff classes in the aggregate is greater than 100.

10. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions and acts giving rise to the claims herein occurred in this District. Defendant distributed, advertised, and sold the Product in Florida and in this District. Moreover, Plaintiff Sellers relied on the Product’s statements and purchased the Product in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 139(b)(2) and (3) because a substantial part of the events or omissions giving rise to these claims occurred in this District, a

substantial part of the property that is the subject of this action is situated in this District, and Defendant is subject to the Court's personal jurisdiction with respect to this action.

FACTS RELEVANT TO ALL CLAIMS

12. Kraft's grated Parmesan cheese products are advertised as consisting of only one, simple ingredient – "100%" Parmesan cheese.

13. As can be seen in the images above, Kraft makes only one marketing representation on the label: The Product is "100%" Grated Parmesan Cheese. Consumers, including Plaintiff, reasonably relied on the label and believed Kraft's statement that the Product consists of "100%" Parmesan cheese, meaning that no substitutes or fillers are present in the container. Because the Product does in fact contain fillers and substitutes, the "100%" Parmesan claim is literally false and is also misleading to consumers, including Plaintiff.

14. Independent testing shows that at least 3.8 percent of the Product is not Parmesan cheese. Indeed, at least 3.8 percent of the Product is not even cheese of any kind, but is rather comprised of fillers and additives. In fact, at least 3.8 percent of the Product is cellulose, an anti-clumping agent derived from wood chips.¹

15. Kraft has been falsely and misleadingly touting that its Grated Parmesan Cheese Products are "100%" Parmesan for decades. In the past, Kraft directly chastised its competitors as having Parmesan made with "fats and fillers," while Kraft's 100% Grated Parmesan Cheese was advertised as the superior Parmesan product because it is "100% grated cheese" and "100% grated Parmesan."²

¹ <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>

² 1990 Kraft 100% Grated Parmesan Cheese commercial, available at <https://www.youtube.com/watch?v=FIImRTxvMk> (last accessed February 17, 2016).

16. Likewise, Kraft's commercials claim that "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."³

17. As can be seen by comparing the label of the 1994 "100% Grated Parmesan Cheese," and the image of the current label, Kraft's misleading labeling and marketing of its Grated Parmesan Cheese products as consisting of "100%" Parmesan have been identical for decades.

18. Indeed, Kraft's uniform marketing and labeling campaign advertising that its "100% Grated Parmesan Cheese" literally contains 100% Parmesan stretches back even before the 1990's. For example, in a 1984 advertisement, a "100% Grated Parmesan Cheese" wrapper surrounds what appears to be an actual cylinder of Parmesan cheese.⁴

19. Kraft's labels for its Grated Parmesan Cheese products in Canada likewise explain that the "100%" representation is a crucial attribute of Kraft's overall marketing message. Like with Kraft's United States labels depicted above, "The label doesn't just say Parmesan, it says 100% Parmesan."⁵

20. Defendant has made, and continues to make, unlawful, false, fraudulent, and misleading claims on the food labels of Kraft's "100% Grated Parmesan Cheese" Products. These claims are prohibited by Florida's consumer protection statutes and warranty laws which render these Products misbranded and unfit for sale in the United States.

³ 1994 Kraft 100% Grated Parmesan Cheese commercial – 1994, <https://www.youtube.com/watch?v=4yQtdaRfNzg> (last accessed February 17, 2016).

⁴ See http://www.vintagepaperads.com/1984-Kraft-100-Grated-Parmesan-Cheese-Ad--Italian_p_116645.html (last accessed February 17, 2016).

⁵ <http://www.kraftcanada.com/brands/kraft-parmesan-cheese/grated> (last accessed on February 17, 2016).

CLASS REPRESENTATION ALLEGATIONS

21. Plaintiff brings this case as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all persons in the United States who, within the relevant statute of limitations period, purchased Kraft's "100% Grated Parmesan Cheese" Products.

22. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased the Products in Florida (the "Florida Subclass").

23. Excluded from the Class are Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest. Any judge and/or magistrate judge to whom this action is assigned and any members of such judges' staffs and immediate families are also excluded from the Class. Also excluded from the Class are persons or entities that purchased the Product for purposes of resale.

24. Plaintiff is a member of the Class and Florida Subclass.

25. Defendant sells millions of containers of the Product. The Product is available in major supermarkets nationwide, including in Florida. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant, third party retailers, and vendors.

26. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether the Product is misbranded, and whether the labeling, marketing and promotion of the Product is false, misleading, and fraudulent.

27. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant's false, misleading and misbranded labels, purchased the Product, and suffered losses as a result of that purchase.

28. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

29. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In 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 on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

The Products' Synthetic Ingredients

30. **Cellulose.** Cellulose is a synthetic ingredient used as an anti-caking agent and filtering aid. An anti-caking agent is a food additive that prevents the ingredients from clumping together after being packaged. Federal regulations classify cellulose as a synthetic ingredient.

See 7 C.F.R. 205.605(b). Kraft products contain cellulose, and are therefore incorrectly packaged in violation of federal regulations as, “100% Grated Parmesan Cheese.”

31. According to its labels, Kraft’s “100% Grated Parmesan Cheese” contains the recognized synthetic ingredient cellulose.

32. The labeling of products as “100% Grated Parmesan Cheese,” carries implicit health benefits that are highly important to consumers—benefits that compel consumers to pay a premium price over comparable products that are not “100% Grated Parmesan Cheese.” Kraft has cultivated and reinforced a corporate image that has catered to this “100% Grated Parmesan Cheese” theme and has boldly placed this claim on each and every one of its Parmesan Cheese products, despite the fact Kraft uses synthetic ingredients in its products.

33. Kraft has used the “100% Grated Parmesan Cheese” label to shape its brand and sell its foods. Yet, the existence of cellulose in its food renders the use of the label “100% Grated Parmesan Cheese,” false and misleading. In manufacturing its products, Kraft had a choice between using only “100% Grated Parmesan Cheese,” or using additional synthetic ingredients. It purposefully chose to use synthetic ingredients, but nonetheless labeled its food products as “100% Grated Parmesan Cheese.”

Kraft’s Products are Misbranded and Illegal

34. All containers of “100% Grated Parmesan Cheese” sold in the United States are misbranded, falsely labeled, and as such are illegal.

35. Their sale constitutes violations of the FDCA, Florida Consumer Protection Statutes §501.201- §501.213, Florida Deceptive and Unfair Trade Practices Act, Negligent Misrepresentation, the Florida Misleading Advertising Statute §817.41, Breach of Express Warranties pursuant to Florida Statute §672.313 and UCC §2-313.

36. With the nutritional and health benefits of natural foods becoming widely known, consumer demand for natural or “100%” products have increased rapidly. It was this enormous market that Defendant hoped to tap with the sale of its Kraft “100% Grated Parmesan Cheese”.

37. Defendant knowingly and intentionally sold these misbranded and falsely labeled products to consumers (including Plaintiff) with the intent to deceive them.

38. Plaintiff purchased the Kraft “100% Grated Parmesan Cheese” within the Class Period while reasonably relying on the truth and accuracy of Defendant’s product labels.

39. Despite the prevalence of synthetic ingredients in the products, the front labels of the Kraft Parmesan Cheese products display the words “100% Grated Parmesan Cheese.”

40. Kraft misleads consumers into believing the Products consist of only Parmesan cheese, when they in fact contain the artificial, synthetic, ingredient cellulose.

41. Plaintiff was willing to pay a premium price for the Kraft “100% Grated Parmesan Cheese” because of the representation that they were “100% Grated Parmesan Cheese,” and would not have purchased the Kraft “100% Grated Parmesan Cheese,” would not have paid as much for the products, or would have purchased alternative products in absence of the representations, or with the knowledge that the products contained the artificial, synthetic, ingredient cellulose.

42. Plaintiff paid for “100% Grated Parmesan Cheese.” products, but received products that were not in fact 100% Parmesan Cheese. The Kraft “100% Grated Parmesan Cheese” that Plaintiff received were worth less than the products for which they paid. By purchasing products in reliance on advertising that is false, Plaintiff has suffered injury in fact and lost money as a result of the unfair business practices alleged herein.

43. To some consumers, including Plaintiff, processes and places of origin matter. Purchasing decisions are heavily influenced by information about production processes and places of origin, such as whether food is kosher or halal, whether wine is from a particular locale, whether a diamond is conflict-free, and whether food was produced by union workers, although these considerations have nothing to do with the product's function or performance.

44. For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she paid more for than he or she otherwise might have been willing to pay if the product had been labeled accurately. The economic harm—the loss of real dollars from a consumer's pocket—is the same whether or not a court might objectively view the products as functionally equivalent.

45. When representations about processes and origins are not true, the consumer who cares about them has “not received the benefit of his or her bargain.”

46. There are “innumerable ways” for a plaintiff to show economic injury, including by showing that the consumer paid more than he or she would have paid otherwise, or entered a transaction that would otherwise have been unnecessary. Defendant's misrepresentations that its “100% Grated Parmesan Cheese” products are 100% Parmesan Cheese was an immediate cause of the injury-producing conduct as Plaintiffs acted upon reliance on the deceptive or misleading statements.

47. With respect to the Kraft “100% Grated Parmesan Cheese” products, Defendant has violated the FDCA and regulations promulgated thereunder. As a result, Defendant has violated various provisions of the Florida Food Safety Act, Fla. Stat. §§500-01-500.80 (2014).

48. Defendant has violated Fla. Stat. § 500.11(1)(f) (2014), because words, statements, or other information required, pursuant to the Florida Food Safety Act, to appear on the label or labeling were unlawfully placed upon the label or labeling, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

49. Defendant has violated Florida Food Safety Act § 500.04(1) (2014), which makes it unlawful to manufacture, sell, deliver, possess, hold, or offer to sell any misbranded food.

50. Defendant has violated Fla. Stat. § 500.115 (2014), which provides that, “an advertisement of a food is deemed to be false if it is false or misleading in any particular.” Defendant’s product labels constitute false advertisement pursuant to Fla. Stat. § 500.115 (2014).

51. The FDCA generally prohibits misleading labeling. *See* 21 U.S.C. § 343(a) (“A food shall be deemed to be misbranded” if “its labeling is false or misleading in any particular.”). Defendant’s labeling is false and misled consumers because contrary to the “100% Grated Parmesan Cheese” claims, Kraft 100% Grated Parmesan Cheese contain the artificial, synthetic, and/or chemical ingredient cellulose. Thus, Defendant’s labeling violates the FDCA. Plaintiff has not, however, sued because the conduct violates the FDCA. Rather, her claims are based on Florida statutes as well as the common law, law that could exist, even if the FDCA were never passed.

52. Plaintiff’s state law claims are aimed at Defendant’s intentional conduct of naming and labeling which are voluntary, and not specifically required conduct by the FDA regulations. Defendant selected the name and label described herein in order to maximize the label’s deceptive impact upon Plaintiffs and other consumers. Indeed, FDA regulations did not require Defendant to name its products using the terms “100% Grated Parmesan Cheese.” Defendant made these labeling decisions because of its marketing strategy. Defendant’s labeling

and marketing misleads consumers into believing that its Kraft “100% Grated Parmesan Cheese” are 100% Parmesan Cheese. Defendant’s label is designed to cause consumers to purchase Kraft “100% Grated Parmesan Cheese” as a result of this deceptive message, and Defendant has succeeded.

53. The FDCA provides that only the federal government – and in limited cases, states – may bring suit to enforce its provisions. *See* 21 U.S.C. § 337. But it does not preempt all state law. *See* Nutrition Labeling and Education Act of 1990, Pub. L. No. 101-535, § 6(c)(1) (“The Nutrition Labeling and Education act of 1990 shall not be construed to preempt any provision of State Law, unless such provision is expressly preempted under... the Federal Food, Drug, and Cosmetic Act.”). Indeed, the Act expressly contemplates that states will enforce their own food labeling requirements. *See* 21 U.S.C. § 343-1(a). Such requirements, though, must be “identical” to those provided by the FDCA. *Id.* To survive a preemption challenge, therefore, a state-law food labeling claim must thread a “narrow gap.” The plaintiff must be suing for conduct that violated the FDCA, but the plaintiff must not be suing *because* the conduct violates the FDCA. *Perez v. Nidek Co.*, 711 F. 3d 1109, 1120 (9th Cir. 2013). Plaintiffs here have threaded this gap.

54. It is plausible that a reasonable consumer, such as Plaintiffs and members of the Class, could interpret the words “100% Grated Parmesan Cheese” to mean that the products do not include any other ingredients other than Parmesan cheese. It is plausible that a reasonable consumer would rely on Defendant’s “100% Grated Parmesan Cheese” claims and such reliance would be reasonable and justified in that Defendant appears to be, and represented itself to be, a reputable business, and it distributed the Products through reputable companies.

Defendant's Knowledge of the Falsity of its Advertising

55. Defendant had knowledge of the false representations that were made regarding the Kraft "100% Grated Parmesan Cheese", insofar as all of those representations appeared on the Kraft "100% Grated Parmesan Cheese" packages.

56. Kraft has knowledge of the federal regulations that apply to the labeling of its food products and, thus, was aware that some of the ingredients have been federally declared as synthetic substances and/or require extensive processing to be safely used as a food ingredient. Defendant has retained expert nutritionists, food chemists, and other scientists, and has spent much time and money in developing its own food technologies, such that it was aware that the artificial, synthetic and/or chemically produced ingredients used in its products are not 100% Parmesan Cheese.

57. As such, Defendant had knowledge of all facts demonstrating that its Kraft "100% Grated Parmesan Cheese" contains the artificial, synthetic and/or chemically produced ingredient cellulose, and that the products were falsely labeled. The misrepresentation and omissions were uniform and were communicated to Plaintiffs, and to each member of each class, at the point of purchase and consumption.

CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

All persons in Florida who, within the Class Period, purchased Kraft 100% Grated Parmesan Cheese, labeled "100% Grated Parmesan Cheese." (the "Class").

59. In the alternative, Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(c) on behalf of the following class:

All persons in United States who, within the Class Period, purchased Kraft 100% Grated Parmesan Cheese, labeled “100% Grated Parmesan Cheese.” (the “Class”).

60. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

61. 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.

62. **Numerosity:** Based upon Defendant’s publicly available sales data with respect to Kraft “100% Grated Parmesan Cheese,” it is estimated that the Class numbers are potentially in the millions, and the joinder of all Class members is impracticable.

63. **Common Questions Predominate:** This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

- a. Whether Defendant engaged in unfair, unlawful or deceptive business practices by failing to properly package and label Kraft “100% Grated Parmesan Cheese” sold to consumers;
- b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;
- c. Whether Defendant made unlawful and misleading claims regarding the 100% Parmesan Cheese characteristic of the Kraft “100% Grated Parmesan Cheese”;

- d. Whether Defendant uniformly conveyed to the Class that the Products were “100% Grated Parmesan Cheese”
- e. Whether Defendant’s claims that the Products are “100% Grated Parmesan Cheese” are true or false, or likely to deceive a reasonable consumer.
- f. Whether Defendants violated Florida Consumer Protection Statutes §501.201-§501.213, Florida Deceptive and Unfair Trade Practices Act, Negligent Misrepresentation, the Florida Misleading Advertising Statute §817.41, Breach of Express Warranties pursuant to Florida Statute §672.313 and UCC §2-313.
- g. Whether Plaintiffs and the Class are entitled to equitable relief;
- h. Whether Defendant’s unlawful, unfair and/or deceptive practices harmed Plaintiffs and the Class;
- i. Whether Defendant acted negligently by its deceptive practices;
- j. Whether Defendant was unjustly enriched by its deceptive practices.

64. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs purchased Defendant’s products during the Class Period. Defendant’s unlawful, unfair, and fraudulent actions concern the same business practices described herein, irrespective of where they occurred or were experienced. The injuries of each member of the Class were caused directly by Defendant’s wrongful conduct. In addition, the factual underpinning of Defendant’s misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs’ 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.

65. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor their counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and their counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiffs and their counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharged those duties by vigorously seeking the maximum possible recovery for the Class.

66. **Superiority:** There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they are not parties. Class Action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

67. The prerequisites to maintaining a class action equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate equitable relief with respect to the Class as a whole.

68. The prerequisites to maintaining a class action pursuant to Fed R. Civ. P. 23(b)(3) are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

69. Plaintiffs and their counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

70. Plaintiffs are members of the Class they seek to represent. Plaintiffs' claims are typical of the Class members' claims. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiff's claims are typical and representative of the Class.

71. There are no unique defenses that may be asserted against Plaintiffs individually, as distinguished from the Class. The claims of Plaintiffs are the same as those of the Class.

72. This class action is superior to any other method for the fair and efficient adjudication of this dispute.

CAUSES OF ACTION

COUNT I

VIOLATION OF FLORIDA CONSUMER PROTECTION ISTATUTES §501.201- §501.213, FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

73. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

74. Defendant's conduct constitutes unlawful, unfair and deceptive business acts and trade practices.

75. Defendant sold its products in Florida during the Class Period.

76. Florida Consumer Protection Statute §501.204 (2014) prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. For the reasons discussed above, Defendant has engaged in unfair, false, deceptive, business acts and false and misleading advertising in violation of Fla. Stat. §§501.201-501.213 (2014).

77. The Florida Deceptive and Unfair Trade Practices Act also prohibits any, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in conduct of any trade or commerce." Defendant has violated Fla. Stat. §501.204's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the false and deceptive representations, as set forth more fully herein, and violating, 21 U.S.C. §331, 21 U.S.C. §362, 21 C.F.R. §1.21, and the common law.

78. Plaintiffs and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing to this date.

79. As stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair competition, and truth-in-advertising laws in Florida resulting in harm to consumers. Defendant's conduct constitutes violations of the public policies against engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers as proscribed by Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§501.201-501.213 (2014).

80. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

81. Defendant's false claims, nondisclosures and misleading statements, as more fully set forth above and collectively as a scheme, were intentionally misleading and likely to deceive the consuming public within the meaning of the Florida Deceptive and Unfair Trade Practices Act.

82. Defendant's deceptive conduct constitutes a prohibited practice, which directly and proximately caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiffs and Class members have suffered injury in fact, actual damages, and have lost money because they purchased the Products at the price they paid believing the labeling claims described above to be true.

83. Plaintiff, on behalf of herself, and all others similarly situated, seek restitution and disgorgement of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competitions, and all other relief this Court deems appropriate, consistent with Florida Deceptive and Unfair Trade Practices Act.

COUNT II

NEGLIGENT MISREPRESENTATION

84. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

85. During the relevant statutory time period, Defendant made false representations to Plaintiff and Class Members as they pertain to the sale of its Kraft "100% Grated Parmesan Cheese."

86. The representation of material fact that Defendant's "100% Grated Parmesan Cheese" are 100% Parmesan Cheese was false. The true facts are: 1.) Defendant's Kraft "100% Grated Parmesan Cheese" are not 100% Parmesan Cheese and contain synthetic ingredients; 2.)

despite having knowledge that its Kraft “100% Grated Parmesan Cheese” were not 100% Parmesan Cheese Defendant labeled its Kraft “100% Grated Parmesan Cheese” as being 100% Parmesan Cheese 3.) Defendant charged a premium for its Kraft “100% Grated Parmesan Cheese,” despite their not being 100% Parmesan Cheese.

87. When Defendant made the representations set forth above, it had no reasonable grounds for believing them to be true.

88. Defendant made the representations with the intention of inducing Plaintiff and Class Members to act in reliance upon these representations in the manner alleged herein, or with the expectation that they would so act.

89. Plaintiff and Class Members, at the time the representations were made by Defendant, were ignorant of the falsity of the representations and believed them to be true. In reliance on these representations, Plaintiffs and Class Members were induced to and did pay monies to purchase Defendant’s Kraft “100% Grated Parmesan Cheese.”

90. Had Plaintiff and Class Members known the actual facts, they would not have taken such action. Furthermore, Defendant had no reason to believe that Plaintiff and other consumers would act otherwise than to rely on the “100% Grated Parmesan Cheese” representation.

91. As a direct and proximate result of the Defendant’s conduct as herein alleged, Plaintiffs and Class members paid monies to Defendant, through Defendant’s regular retail sales channels, to which Defendant is not entitled, and have been damaged in an amount to be proven at trial.

92. As a direct and proximate result of Defendant’s misrepresentations, Plaintiff and Class members have sustained injuries by purchasing Defendant’s Kraft “100% Grated Parmesan

Cheese,” which were not as represented, thus entitling Plaintiffs to judgment and equitable relief against Defendant, as well as restitution, attorneys’ fees and costs, as set forth in the Prayer for Relief.

COUNT III

VIOLATION OF FLORIDA MISLEADING ADVERTISING STATUTE §817.41

93. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

94. §817.41, Fla. Stat. prohibits “any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.”

95. Defendant made false representations of material fact that they knew, or should have known, were false.

96. By creating and disseminating the false and deceptive product labels, Defendant has falsely represented to the public that its products are “100% Grated Parmesan Cheese” when in fact they are not.

97. Defendant knew, or should have known, that the aforementioned false representations of material fact disseminated by the Defendant were false.

98. Defendant disseminated false representations of material fact with the intent to induce Plaintiffs, and other members of the Class, to rely on said false representations.

99. The false representations of material fact made by the Defendant were likely to deceive reasonable consumers.

100. The Plaintiffs, and other members of the Class, reasonably relied on the false representations of material fact made by the Defendant.

101. In relying on the false representations of material facts made by the Defendant, the Plaintiffs, and other members of the Class, were deceived.

102. As a direct and proximate cause of Defendant's violation of Florida Statute §817.41, Plaintiff and the members of the Class, were injured when they paid money for the Defendant's misbranded and falsely labeled products.

103. As a result of Defendant's unlawful false advertising practices, Plaintiff and the members of the Class who purchased Defendant's products in Florida and throughout the United States, are entitled to orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class money paid for the Defendant's products, both are amounts to be determined at trial.

104. Plaintiff and the members of the Class are also entitled to costs, including reasonable attorney's fees.

COUNT IV

BREACH OF EXPRESS WARRANTY PURSUANT TO § 672.313 FLORIDA STATUTES AND UNIFORM COMMERCIAL CODE §2-313

105. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

106. 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 Kraft "100% Grated Parmesan Cheese." The terms of that contract included the express promise and affirmation of fact that the products were "100% Grated Parmesan Cheese." The Kraft "100% Grated Parmesan Cheese" packaging and advertising constitute express warranties, became parts of the basis of the bargain,

and are parts of a standardized contract between Plaintiffs and the members of the Class on the one end, and Defendant on the other.

107. Kraft displayed the words “100% Grated Parmesan Cheese” on the front of the Products’ packaging, which created an express warranty. Kraft breached this express warranty by including artificial, synthetic, or chemically produced ingredients that are not 100% Parmesan Cheese.

108. At the time of making this express warranty with respect to the 100% Parmesan Cheese nature of the Kraft “100% Grated Parmesan Cheese.” Defendant knew or should have known that it had breached the terms of the warranties with Plaintiffs and the Class, by providing the Kraft “100% Grated Parmesan Cheese” that proved to not be 100% Parmesan Cheese.

109. Members of the public, including Plaintiff, reasonably relied upon the skill and judgment of the Defendant, and upon said express warranty, when purchasing Kraft “100% Grated Parmesan Cheese.”

110. Due to Defendant’s illegal conduct as alleged herein, Plaintiff and the Class could not have known about the artificial, synthetic, and/or chemically produced ingredients present in the Kraft “100% Grated Parmesan Cheese.”

111. As a direct and proximate result of Defendant’s breach of express warranty with respect to the Kraft “100% Grated Parmesan Cheese,” Plaintiff suffered injuries as set forth above, entitling Plaintiffs to judgment and equitable relief against Defendant, as well as restitution, including all monies paid for the Kraft “100% Grated Parmesan Cheese” and disgorgement of profits from Defendant received from sales of the Kraft “100% Grated Parmesan Cheese,” attorneys’ fees, and costs, as set forth in the Prayer for Relief.

112. All conditions precedent to Defendant's liability under this contract, including providing Defendant with pre-suit notice, have been performed by Plaintiff and the Class.

COUNT VI

UNJUST ENRICHMENT

113. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

114. As a result of Defendant's fraudulent and misleading labeling, advertising, marketing, and sales of Kraft "100% Grated Parmesan Cheese." Defendant was enriched at the expense of Plaintiff and the Class.

115. Defendant sold the Kraft "100% Grated Parmesan Cheese," which were products that were illegally sold, illegally branded and had no economic value, to Plaintiff and the Class.

116. It would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits they received from Plaintiff and the Class in light of the fact that the products were not what Defendant purported them to be.

117. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to Plaintiff and the Class of all monies paid to Defendant for the Kraft "100% Grated Parmesan Cheese" at issue. When representations about processes and origins of ingredients in a product are not true, the consumer who cares about them has "not received the benefit of his or her bargain."

118. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

JURY DEMAND

Plaintiff hereby demands a trial by jury of their claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, pray for judgment against Defendant as follows:

- A. For an order certifying this case as a Class Action and appointing Plaintiff and their counsel to represent the Class;
- B. That the Court adjudges and decrees that Defendant has engaged in the conduct alleged herein;
- C. Awarding declaratory relief as permitted by law or equity, including: Directing Defendant to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- D. Ordering Defendant to engage in a corrective advertising campaign;
- E. Awarding Plaintiff and the proposed Class member's damages;
- F. Awarding restitution and disgorgement to Plaintiff and the other Class members;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

Dated: March 18, 2016

Respectfully submitted,

/s/ Tim Howard

Tim Howard, J.D., Ph.D.

Florida Bar No.: 655325

HOWARD & ASSOCIATES, P.A.

2120 Killarney Way, Suite 125

Tallahassee, FL 32309

Telephone: (850) 298-4455

Fax: (850) 216-2537

tim@howardjustice.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHRISSEY SELLERS, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

TIM HOWARD, Howard & Associates, P.A., 2120 Killarney Way, Ste. 125, Tallahassee, FL 32309, (850) 298-4455

DEFENDANTS

KRAFT HEINZ FOODS COMPANY

County of Residence of First Listed Defendant Allegheny (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Violation of 501.201-501.213

Brief description of cause: FDUPTA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/18/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Tim Howard

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



CHRISSY SELLERS, individually, and on behalf of all others similarly situated

Plaintiff(s)

v.

KRAFT HEINZ FOODS COMPANY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

KRAFT HEINZ FOODS COMPANY
CT Corporation System, Registered Agent
1200 S. Pine Island Road
Plantation, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PHILLIP TIMOTHY HOWARD
HOWARD & ASSOCIATES PA- TALLAHASSEE FL
2120 KILLARNEY WAY STE 125
TALLAHASSEE, FL 32309
850-298-4455

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



CHRISSEY SELLERS, individually, and on behalf of all others similarly situated

Plaintiff(s)

v.

KRAFT HEINZ FOODS COMPANY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) KRAFT HEINZ FOODS COMPANY
ATTN: Legal Department
3000 Executive Pkwy
San Ramon, CA 94583

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PHILLIP TIMOTHY HOWARD
HOWARD & ASSOCIATES PA- TALLAHASSEE FL
2120 KILLARNEY WAY STE 125
TALLAHASSEE, FL 32309
850-298-4455

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: