

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

MELISSA LEIGH RANDOLPH, on Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

KRAFT HEINZ FOODS COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Melissa Leigh Randolph (“Plaintiff”), by and through his attorneys, brings this action on behalf of herself and all others similarly situated against Defendant KRAFT HEINZ FOODS COMPANY (“Kraft” or “Defendant”). Plaintiff hereby alleges, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

NATURE OF THE ACTION

1. Defendant Kraft Heinz Foods Company is an American worldwide food company and produces thirteen different brands. The company is currently the third largest food and beverage producer in the United States and fifth largest worldwide. One of Kraft’s bestselling products is Kraft 100% Grated Parmesan Cheese (the “Products”). The company advertises its Product across the United States and sells thousands, if not millions, of containers of its “100% Grated Parmesan Cheese” product. The product is advertised as “100%” Parmesan cheese. However, recent independent laboratory testing has revealed the product is not in fact pure Parmesan cheese as advertised, but the product also contains significant amounts of cellulose. Cellulose is derived from wood pulp and is used as filler and is also used to prevent clumping.

2. Plaintiff is a Florida resident and purchased the Product in Florida. Plaintiff seeks to represent a class of Florida consumers. Plaintiff and the members of the Class purchased Kraft's "100%" Parmesan cheese products believing the products were 100% Parmesan cheese. However, the product is substantially less than "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.

3. Despite its use of cellulose, Kraft's product was advertised and sold as 100% Parmesan cheese to Florida consumers in violation of Florida law. Plaintiff seeks relief individually and on behalf of all Florida purchasers of Kraft's 100% Grated Parmesan Cheese products for Violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 et seq.

JURISDICTION AND VENUE

2. Original jurisdiction in this Court is proper pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and this is a class action in which members of the Plaintiff Class are citizens of a state different from Defendant.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to the alleged claims occurred in this district and because Defendant is authorized to conduct business in this district and have intentionally availed themselves of the laws and markets within this district through the promotion, marketing, distribution, and sale of their Products in this district; does substantial business in this district; and is subject to personal jurisdiction in this district.

PARTIES

4. Plaintiff resides in West Palm Beach, Florida. During the Class period, Plaintiff purchased one or more containers of the Product for personal use, suffered injury in fact, and lost money and property as a result of the unfair competition and unlawful, unfair and fraudulent business practices described herein.

5. 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 its 100% Grated Parmesan Cheese product to consumers throughout the United States, including tens of thousands of consumers in Florida.

DEFENDANT'S UNLAWFUL CONDUCT

6. The appeal of Kraft's grated Parmesan cheese is its simplicity. Kraft products are marketed as containing one ingredient, Parmesan cheese. Despite being added to every container of the Product, the additional cellulose ingredient cannot be found anywhere on the label. Plaintiff and class members reasonably relied on the marketing, advertising, and the label that the Product was 100% Parmesan cheese without the presence of anti-clumping additives or fillers. Every container of the Product includes cellulose and makes Kraft's 100%" Parmesan assertion false and misleading to Plaintiff and Florida consumers.

7. Recent independent testing shows that at least 3.8 percent of the Product is not Parmesan Cheese, but is contains fillers and additives. The test revealed that at least 3.8 percent of the Product is cellulose, an anti-clumping agent derived from wood pulp.

8. Kraft has falsely advertised that its Grated Parmesan Cheese Products are "100%" Parmesan throughout the statute of limitations. While Kraft directly touted its Product as 100% pure, it also hectorated competitors being less than pure and containing fat and fillers. There commercials went on to state: *"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."* This marketing is consistently the focal point of Kraft's marketing as seen with marketing lines like "The label doesn't just say Parmesan, it says 100% Parmesan."

9. Kraft has uniformly duped Florida consumers with its misleading advertising campaign touting its Grated Parmesan Cheese products as consisting of "100%" Parmesan. This uniform representation has been an essential element of Kraft's fraudulent marketing campaign and Kraft continues to make false and misleading claims regarding its 100% Grated Parmesan Cheese Products.

CLASS ALLEGATIONS

10. Plaintiff brings this action on behalf of herself and all similarly situated Florida consumers pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class of persons whom Plaintiff seeks to represent is defined as:

All ascertainable persons in Florida who, throughout the applicable, purchased Kraft's 100% Grated Parmesan Products (the "Class" or "Class members"). Excluded from the Class are anyone that purchased for resale, the Defendant, any parent, subsidiary or affiliate of the Defendant, any entity in which the Defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

11. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

12. There are questions of law and fact common to the Class.

13. Plaintiff's claims are typical of the claims of the members of the Class. The named Plaintiff is a member of the Class of victims described herein.

14. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflicts with the interests of other members of the Class.

15. The self interests of the named Class representative are co-extensive with, and not antagonistic to, those of the absent Class members. The proposed representative will undertake to represent and protect the interests of the absent Class members.

16. The named Plaintiff has engaged the services of counsel indicated below. Counsel are experienced in complex class-action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise will represent the named Class representative and absent Class members.

17. This action is appropriate as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

18. This action involves questions of law and fact common to Plaintiff and all members of the Class. These common questions predominate over any issues affecting individual members of the Class and include:

- whether Defendant engaged in an unlawful, unfair, misleading or deceptive business act or practice through their labeling and advertising practices;
- whether Defendant falsely represented its Product as “100% Parmesan”;
- whether Defendant knew that their Product was not “100% Parmesan”;
- whether Plaintiff and Class members are entitled to injunctive relief enjoining Defendant from continuing to advertise their Product as “100% Parmesan”;
- whether Defendant should be made to engage in a corrective advertising campaign; and
- whether Plaintiff and Class Members have been harmed and the proper measure of relief.

19. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

20. There is no plain, speedy or adequate remedy other than by maintenance of this lawsuit as a class action because individual damages are relatively small, making it economically infeasible for Class members to pursue remedies individually. The prosecution of separate actions by individual members of the Class, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members against Defendant and would establish incompatible standards of conduct for Defendant.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendant committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;
- when Defendant’s liability has been adjudicated, claims of all Class members can be determined by the Court;
- this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and

- without a class action, many Class members would continue to suffer injury, and Defendant's violations of law will continue without redress while Defendant continues to reap and retain the substantial proceeds of their wrongful conduct.

22. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

23. Defendant has acted on grounds applicable to the Class generally; therefore, Plaintiff seeks equitable and injunctive relief on behalf of the entire Class on grounds generally applicable to the entire Class.

COUNT I

For Violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq.*

24. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

25. Defendant violated and continues to violate Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of their business.

26. The material misstatements and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public into believing that Defendant's Product is "100% Parmesan".

27. Plaintiff and Class members relied upon these statements in deciding to purchase the Product. Plaintiff's reliance was reasonable because of Defendant's reputation as reliable company.

28. Had Plaintiff known that the Products were not 100% Parmesan, she would not have purchased them.

29. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount paid for the Product.

30. Defendant's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

31. Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the amount paid for Defendant's Product.

32. Defendant should also be ordered to cease its deceptive advertising, and should be made to engage in a corrective advertising campaign, to inform consumers that their Products are not 100% Parmesan.

COUNT II

For False and Misleading Advertising, Fla. Stat. § 817.41

33. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

34. On their website, on product labels, in print advertisements, and in other forms of advertisements, Defendant made numerous misrepresentations of material fact that its Products were 100% Parmesan.

35. Defendant knew that these statements were false.

36. Defendant made these statements for the purpose of selling property, and intended that consumers rely upon them in purchasing its Products.

37. Plaintiff and Class members did in fact rely upon these statements in the Products. Reliance was reasonable and justified because of Defendant's reputation as a reliable company.

38. As a result of Defendant's misrepresentations, Plaintiff and Class members suffered damages in the amount paid for the Products.

39. Plaintiff and Class members are entitled to damages and injunctive relief as set forth in above.

COUNT III Unjust Enrichment

40. Plaintiff incorporates by reference each of the preceding allegations as though fully set forth herein.

41. Plaintiff and Class members conferred a benefit on Defendant by purchasing the Products at a premium price.

42. Defendant received the moneys paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

43. Defendant accepted and retained the benefit in the amount of the profits they earned from sales of the Product to Plaintiff and Class members.

44. Defendant has profited from their unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

45. Plaintiff does not have an adequate remedy at law against Defendant.

46. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product and disgorgement of the profits Defendant derived from sales of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- A. Certify this action as a class action;
- B. Award compensatory, statutory, and punitive damages as to all Counts where such relief is permitted by law;
- C. Enjoin Defendant's conduct and order Defendant to engage in a corrective advertising and labeling/disclosure campaign;
- D. Award equitable monetary relief, including restitution;
- E. Award pre-judgment and post-judgment interest at the legal rate;
- F. Award Plaintiff and Class members the costs of this action, including reasonable attorneys' fees and expenses; and
- G. Award such other and further legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

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

DATED: April 4, 2016

s/William C. Wright

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Attorneys for Plaintiff

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS Melissa Randolph

DEFENDANTS The Kraft Heinz Company

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

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

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

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

William Wright The Wright Law Office, P.A.
 301 Clematis Street, Suite 3000 West Palm Beach, FL 33401

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
 2 Removed from State Court
 3 Re-filed (See VI below)
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment
 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO
 b) Related Cases YES NO
 (See instructions): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION 28 USC 1332(d)(2), FUTDPA

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE

April 4, 2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



MELISSA RANDOLPH, on behalf of herself and those)
similarly situated,)

Plaintiff(s)

v.

THE KRAFT HEINZ COMPANY)

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE KRAFT HEINZ COMPANY
One PPG Place
Pittsburg, PA 15222

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:

William Wright
The Wright Law Office, P.A.
301 Clematis Street, Suite 3000
West Palm Beach, FL 33401
561-514-0904
willwright@wrightlawoffice.com

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: